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8
9 STATE OF CALIFORNIA

10 STATE WATER RESOURCES CONTROL BOARD

11 In the matter of:

12 CLEANUP AND ABATEMENT ORDER
13 NO. R2-2015-0038;
POINT BUCKLER CLUB, LLC

No.

AMENDED
PETITION FOR REVIEW
AND
REQUEST FOR STAY
(ACTION ON STAY REQUESTED BY
OCTOBER 30, 2015)

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1 **I. INTRODUCTION**

2 Petitioner Point Buckler Club, LLC would like to restore a duck club on the island it owns in
3 the Suisun Marsh. This effort should be easy. The Suisun Marsh Preservation Act is extremely
4 duck-club friendly. It specifically exempts duck clubs from obtaining a marsh development permit
5 when the work is consistent with an individual management plan certified by the San Francisco Bay
6 Conservation and Development Commission (“BCDC”). Here there is a certified plan, and the work
7 is consistent with it.

8 The Suisun Marsh Protection Plan makes clear that duck clubs are especially favored. It
9 recognizes that duck clubs are a “vital component” of the wintering habitat of migrating waterfowl
10 because they encourage production of preferred waterfowl food plants that would not otherwise be
11 available. The Water Quality Control Plan for the San Francisco Bay Basin (“Basin Plan”)
12 recognizes these values by including wildlife habitat and noncontact recreation among the beneficial
13 uses for Grizzly Bay, where the island is located.

14 The work at issue—digging out interior ditches and using the material to maintain or replace
15 existing levees—is generally authorized by the U.S. Army Corps of Engineers and certified by the
16 Regional Board, which has issued section-401 certifications for two permits. These permits
17 authorize hundreds of thousands of cubic yards of material to be excavated from interior ditches and
18 used for the purposes of maintaining and replacing levees in the Suisun Marsh.

19 If for no other reason, restoration of the duck club at Pint Buckler should be encouraged
20 because it is a mitigation measure imposed by the State Water Resources Control Board
21 (“State Board”) and Regional Water Quality Control Board for the San Francisco Bay Region
22 (“Regional Board”) on the California Department of Water Resources (“DWR”) for water diversions
23 from the Delta.

24 Nevertheless, the Regional Board has been duck-club-hostile. If there were any irregularity
25 in any permitting needed for the duck club, the Regional Board could have identified that irregularity
26 and demanded that it be resolved. But it has not shown an interest in correcting permit irregularities,
27 and certainly has not given Petitioners an opportunity to make corrections. Instead, with almost no
28 preamble, the Regional Board has issued Cleanup and Abatement Order No. R2-2015-0038 (the

1 “Order”), which requires Petitioner to restore tidal circulation to the interior of the island. This
2 Order kills the duck club, which at times needs to restrict tidal circulation and raise the water level
3 within the island in order to flood the duck ponds. The island is unusual. The duck ponds are above
4 high tide, and have been flooded by maintaining the levees, closing the tide gates, and pumping
5 water into the island. As part of its mitigation, DWR provided the pump.

6 Worse still, the Regional Board killed off the duck club in violation of the Constitutional
7 due process rights of Petitioner and its owners. The Regional Board has taken Petitioner’s property
8 without an opportunity for a hearing, in which Petitioner could have reviewed whatever evidence the
9 Regional Board has obtained—the Regional Board has not presented its evidence to Petitioner—and
10 provided information that would have assisted the decision-maker.

11 The Regional Board has also engaged in impermissible ex parte communications. Staff who
12 are prosecuting this action have communicated with the advisory team, and apparently with the
13 decision-maker, outside of the Petitioner’s presence.

14 The Regional Board has violated the Suisun Marsh Preservation Act by taking action
15 inconsistent with that act.

16 The Regional Board has violated the Porter-Cologne Act by issuing a cleanup and abatement
17 order without meeting the conditions prescribed by Water Code § 13304. The Board justifies the
18 Order on the grounds that waste has been discharged into waters of the state and has created a
19 condition of pollution, but the work at issue was not and cannot be a condition of pollution.
20 It cannot be a condition of pollution because the Legislature has authorized the work through the
21 Suisun Marsh Protection Act, because the Regional Board and State Board have called for the work
22 as a mitigation measure to be implemented by DWR, and because the Regional Board has issued two
23 section-401 certifications in which it necessarily concluded that this type of work does not create a
24 condition of pollution. Also, the material used was not a waste.

25 The Order violates California Environmental Quality Act (“CEQA”) because it interferes
26 with the implementation of required mitigation.

27 The Order violates the Constitutional void-for-vagueness doctrine because it requires reports
28 that must personally satisfy an individual. This standard is too vague to pass Constitutional muster.

1 Petitioner requests a stay. Because of the short deadlines in the Order, Petitioner requests
2 that the State Board act on the stay request by October 30, 2015, which is the day before the first
3 submission in the Order is due.

4 The State Board should rescind the Order on the grounds that it violates the due-process
5 requirement for a hearing, it violates the due-process prohibition on ex parte communications and
6 requirement for separation of functions, it violates the Suisun Marsh Preservation Act and Suisun
7 Marsh Protection Plan, it violates the Porter-Cologne Act, it violates CEQA, it violates the void-for-
8 vagueness doctrine, and it is an abuse of the Regional Board's discretion.

9 **II. IDENTIFICATION OF PETITIONER**

10 Petitioner is Point Buckler Club, LLC, and should be contacted through counsel:

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17 **III. REGIONAL BOARD ACTION TO BE REVIEWED**

18 Cleanup And Abatement Order No. R2-2015-0038; Point Buckler LLC, Solano County,
19 attached to the Amended Declaration of Lawrence S. Bazel ("Amended Am. Bazel Decl.") as
20 Exhibit 1.

21 **IV. DATE OF REGIONAL BOARD ACTION**

22 The Executive Officer of the Regional Board issued the Order on September 11, 2015.

23 **V. STATEMENT OF REASONS
WHY THE REGIONAL BOARD ACTION WAS IMPROPER**

24 The Regional Board action was improper for the reasons set out in the points and authorities
25 in section IX below.

26 **VI. MANNER IN WHICH PETITIONER IS AGGRIEVED**

27 Petitioner is aggrieved because the Constitutional rights of itself and its members have been
28 violated, and because it is being prohibited from maintaining and restoring the duck club that existed

1 at the property and is authorized—and even required—by various statutes and other legal
2 requirements, as specified in section IX below.

3 **VII. STATE BOARD ACTION REQUESTED BY PETITIONER**

4 Petitioner requests that the Order be stayed, and that the State Board act on the stay by
5 October 30, 2015. The Regional Board has just informed Petitioner by telephone that the November
6 1, 2015 deadline in the Order will be extended by 30 days. Petitioner is requesting action by
7 October 30, 2015 so that, if the State Board does not act, Petitioner has an opportunity to move for a
8 stay in superior court before the Order’s deadline. If the State Board cannot issue a stay by
9 October 30 Petitioner requests that the State Board act to postpone the submissions required by the
10 Order until the State Board can act on the stay request.¹

11 Petitioner also requests that the State Board should rescind the Order on the grounds that it
12 violates due process, it violates the Suisun Marsh Preservation Act and Suisun Marsh Protection
13 Plan, it violates the Porter-Cologne Act, it violates CEQA, it violates the void-for-vagueness
14 doctrine, and it is an abuse of the Regional Board’s discretion.

15 **VIII. BACKGROUND**

16 **A. In The 1970s, The Legislature Acted To Protect Suisun Marsh**

17 In 1974, the California Legislature enacted the Nejedly-Bagley-Z'berg Suisun Marsh
18 Preservation Act of 1974, which directed the San Francisco Bay Conservation and Development
19 Commission (“BCDC”) and the Department of Fish and Game to prepare the Suisun Marsh
20 Protection Plan “to preserve the integrity and assure continued wildlife use” of the Suisun Marsh.
21 (Suisun Marsh Protection Plan² at 9.)

22 The Suisun Marsh Protection Plan, which was published in 1976 and updated in 2007,
23 emphasizes the importance of duck clubs to the Suisun Marsh. Duck clubs, which “encourage
24 production of preferred waterfowl food plants”, “are a vital component of the wintering habitat for
25 waterfowl migrating south”:

26 In the Suisun Marsh, about 50,700 acres of managed wetlands are currently
27 maintained as private waterfowl hunting clubs and on publicly-owned wildlife
management areas and refuges. Because of their extent, location and the use

28 ¹

² http://www.bcdc.ca.gov/laws_plans/suisun_marsh.shtml

1 of management techniques to encourage production of preferred waterfowl
2 food plants, managed wetlands of the Suisun Marsh are a vital component of
3 the wintering habitat for waterfowl migrating south on the Pacific Flyway, and
4 also provide cover, foraging and nesting opportunities for resident waterfowl.
5 Managed wetlands also provide habitat for a diversity of other resident and
migratory species, including other waterbirds, shorebirds, raptors, amphibians,
and mammals. Managed wetlands can protect upland areas by retaining flood
waters and also provide an opportunity for needed space for adjacent wetlands
to migrate landward as sea level rises.

6 (*Id.* at 12 (Environment Finding 5).) Duck clubs “have made considerable contributions to the
7 improvement of the Marsh habitats for waterfowl”:

8 The Marsh is well known for waterfowl hunting in California.

9 The recreational values of the Marsh, particularly for duck hunting, have been
10 a significant factor in its preservation. Private duck clubs...have made
11 considerable contributions to the improvement of the Marsh habitats for
12 waterfowl as well as other wildlife.

13 (*Id.* at 28.) Duck clubs “have worked to maintain the area’s habitat value and to protect the natural
14 resources of the Marsh”:

15 Market hunting of waterfowl began in the Suisun Marsh in the late 1850s, and
16 the first private waterfowl sport hunting clubs were established in the early
17 1880s. Generations of hunting club owners and members have worked to
18 maintain the area’s habitat value and to protect the natural resources of the
19 Marsh. Today, waterfowl hunting is the major recreational activity in the
20 Suisun Marsh...

21 (*Id.* (Recreation and Access Finding 2).)

22 The Suisun Marsh Protection Plan establishes, as its first recreational policy, an
23 encouragement of duck clubs:

24 Continued recreational use of privately-owned managed wetlands should be
25 encouraged.

26 (*Id.* at 29 (Recreation and Access Policy 1).)

27 Under “Land Use and Marsh Management”, the Suisun Marsh Protection Plan once again
28 emphasizes the importance of duck clubs:

Within [the primary management] area, existing land uses should continue,
and land and water areas should be managed so as to achieve the following
objectives: ...

- Provision of habitat attractive to waterfowl
- Improvement of water distribution and levee systems ...

1 (*Id.* at 33.) The concepts are reinforced by the findings in this section, which emphasize the
2 importance of managing to “to enhance the habitat through the encouragement of preferred food
3 plant species”:

4 The managed wetlands are a unique resource for waterfowl and other Marsh
5 wildlife, and their value as such is increased substantially by the management
6 programs used by waterfowl hunting clubs and public agencies to enhance the
7 habitat through the encouragement of preferred food plant species.

8 (*Id.* at 34 (Land Use and Marsh Management Finding 2).)

9 Finally, the Suisun Marsh Protection Plan reports that in the 1980s individual management
10 plans (“IMPs”) were developed and certified for each duck club, and that managers can implement
11 these plans—including “enhancements”—without obtaining permits from BCDC:

12 Individual management plans were developed for each waterfowl hunting club
13 in the 1980s, and were reviewed by the California Department of Fish and
14 Game and certified by the San Francisco Bay Conservation and Development
15 Commission. Land managers can conduct ongoing management activities
16 described in the plans, such as maintenance, repairs, and enhancements,
17 without having to apply for separate permits from the Commission for each
18 activity.

19 (*Id.* (Land Use and Marsh Management Finding 3).)

20 In 1977, the Legislature enacted the Suisun Marsh Preservation Act, which has been codified
21 at Public Resources Code §§ 29000 et seq.³ This act directs BCDC to implement the Suisun Marsh
22 Protection Plan. (PRC §§ 29004(b), 29113, 29200, 29202.)

23 **B. The Suisun Marsh Preservation Act Exempts Work Specified In The Point
24 Buckler Management Plan From A BCDC Permit**

25 Although the Suisun Marsh Preservation Act establishes a program for marsh development
26 permits (PRC § 29500), there is an exception for development “specified in the component of the
27 local protection program prepared by the Suisun Resource Conservation District and certified by”
28 BCDC—that is, any development specified in the individual management plans:

 Notwithstanding the provisions of Section 29500, within the primary
management area no marsh development permit shall be required for any
development specified in the component of the local protection program
prepared by the Suisun Resource Conservation District and certified by the
Commission pursuant to Section 29415.

(PRC § 29501.5.) Note that this provision does not require the development to be in a managed

³ http://www.bcdc.ca.gov/laws_plans/suisun_marsh_preservation_act.shtml

1 wetland. All that is required is a certified IMP.

2 As noted above, the Suisun Marsh Protection Plan reports that IMPs were certified for each
3 duck club. (Suisun Marsh Protection Plan at 34 (Finding 3).)

4 BCDC staff provided Petitioner with a copy of the certified management plan for Point
5 Buckler, which at that time was known as the Annie Mason Point Club. (Sweeney Decl., ¶ 2.) The
6 IMP, which was received by BCDC in 1984, describes the club at that time. (*Id.*, Exhibit 1.) There
7 was a single levee with a perimeter ditch system and two gates that were used for flooding and
8 draining. (*Id.*) The IMP refers to “maintenance of levees, ditches, and water control structures.”
9 (*Id.*, Exhibit 1 at 2.) “Ditches need to be kept clear of vegetation blockages or silt build-ups to allow
10 circulation and drainage.” (*Id.*) “The dense growth of undesirable vegetation in the pond needs to
11 be reduced by burning and/or discing”. (*Id.*) “Removing the old vegetation and turning over the soil
12 provides a seed bed for the establishment of new vegetation which is more preferred by waterfowl.”
13 (*Id.*) The IMP also identifies interior and exterior levee repairs. (*Id.*, Exhibit 1, last page.)

14 An aerial photo from 1984 shows that the levees at that time had been repaired, and were
15 intact. (Am. Bazel Decl., Exhibit 2.) This photograph is consistent with the IMP which notes that
16 “the club reports that it now has the water control structures and tight levees necessary for proper
17 water management.” (Sweeney Decl., Exhibit 1 at 1.)

18 A document provided by BCDC, entitled “General Information”, which appears to have been
19 prepared no later than 1980, reports that existing vegetation at the island had “a relatively low use
20 and section value for waterfowl” and that “changing the habitat to a highly productive and selective
21 one for waterfowl should be relatively easy.” (Am. Bazel Decl., Exhibit 10, next-to-last page.) It
22 also reports that “[t]he main problem hampering proper management of the club is water control.”
23 (*Id.*) If the levee system and irrigation structures are repaired “adequate water control will be
24 achieved”. (*Id.*, last page.)

25 The levees that had been repaired by 1984 appear to have been damaged in the mid-1980s,
26 and repaired again in 1990. (*See* Am. Bazel Decl., Exhibit 11 (Wetlands Maintenance Management
27 Report dated 1990 referring to use of 4,000 cubic yards to repair levees).) Once the levees had been
28 repaired, DWR apparently installed a pump, as discussed in the next section.

1 Documents provided by BCDC include no amendment or modification of the individual
2 management plan for Point Buckler Island. (Am. Bazel Decl., ¶ 13.) The initial plan is therefore
3 still in effect.

4 Nor has BCDC issued a permit authorizing abandonment of the managed wetlands at Point
5 Buckler. (*Id.*)⁴

6 **C. The Department Of Water Resources Provided For A Duck Club At**
7 **Point Buckler As Mitigation For Its Delta Diversions**

8 The Suisun Marsh Protection Plan identifies increasing salinity as a threat to the Suisun
9 Marsh:

10 Numerous upstream storage facilities, together with diversions of water from
11 the Delta and the tributary streams of the Delta, have substantially reduced the
12 amount of fresh water flowing into the Delta with a resultant increase in
13 salinity intrusion into the Marsh....

14 (Suisun Marsh Protection Plan at 14.) Increasing salinity, the Protection Plan found,

15 will limit the distribution and abundance of important waterfowl food plants
16 and ultimately reduce the wetland diversity and the capability of the Marsh to
17 support wintering waterfowl.

18 (*Id.* (Finding 4).)

19 In 1984, the California Department of Water Resources (“DWR”), which operates the State
20 Water Project, published a Plan Of Protection For The Suisun Marsh Including Environmental
21 Impact Report. The purpose of the plan was “to mitigate the effects of the Federal Central Valley
22 Project (CVP) and the State Water Project (SWP) on the Suisun Marsh.”⁵ (Plan at 1.) The plan was
23 required by State Board Water Right Decision 1485. (*Id.* at 7.) Because the plan was issued to
24 comply with D-1485, the State Board must have approved it.

25 DWR’s mitigation facilities included the “Annie Mason Island Pump Facility”, that “would
26 operate “when water quality on the island required improvement from October through April.” (*Id.*
27

28 ⁴ It appears that a managed wetland cannot be abandoned without a permit from BCDC.
(PRC § 29500 (requiring permit for development); PRC § 29114 (defining “development” to include
“change in the density or intensity of use of land” and “change in the intensity of use of water”);
14 CCR § 10125 (defining “substantial change in use” to include “abandonment” of a “managed
wetland”).

http://www.bcdc.ca.gov/permits/obtain_permit.shtml (activities requiring permit approval)

⁵ Available online.

1 at 79, 103.) “The pumping equipment will be built and installed when the landowner has improved
2 the island's levee system to provide adequate protection of the island.” (*Id.* at 103.)

3 Although the plan itself does not specify how the pump would provide mitigation, the
4 reasoning is clear. The ponds on the island are above high tide, as can be seen from aerial
5 photographs taken in 2013 and 2015. (Discussed below.) These ponds may have been dug out
6 before the pump was installed, but if so they quickly filled in. In any case, the owner of the island at
7 the time reports that DWR installed a pump, and an old pump is now visible at the island. (Sweeney
8 Decl., ¶ 3.) The purpose of the pump—to flood the ponds—counted as mitigation because it helped
9 preserve the island’s duck habitat and its growth of vegetation preferred by ducks. Without the
10 pump and the flooding of the ponds, the vegetation would revert to non-preferential species.

11 The mitigation required by the plan and its included EIR, therefore, was not just the pump,
12 but rather the maintenance of Point Buckler as property managed for ponding and growth of
13 vegetation preferred by ducks.

14 In 2005, DWR entered into the Revised Suisun Marsh Preservation Agreement with the U.S.
15 Bureau of Reclamation, the California Department of Fish and Game, and the Suisun Resource
16 Conservation District. (Am. Bazel Decl., Exhibit 3.) That agreement reiterated DWR’s obligation
17 to build the facilities it had agreed to build in the 1980s. (*Id.* at 14, ¶ VI.A (page 20 of 112).) That
18 obligation included the pump at the Annie Mason Island Unit. (*Id.* at A-4 (page 73 of 112).)

19 **D. Point Buckler LLC Proceeded To Implement The Individual Management Plan**
20 **Without Awareness Of Any Need For Additional Authorizations**

21 During the dry season of 2014, Petitioner used an excavator to deepen and widen the existing
22 ditches, and placed the material removed on the levees. In some places, the existing levees had been
23 eroded away, and a new levee and ditch were created inside the old location. Places where the levee
24 had fully or partly breached—in two locations, the tide gates were in place, but the levee on top of
25 them had eroded away—were repaired. The resulting levees are approximately 2-3 feet above the
26 surrounding land. Of the two tide gates that had been in place, one is now functioning, and the other
27 needs to be repaired. (Sweeney Decl., ¶ 4.)

28 Petitioner understood, from the previous owner, that maintenance of the levees was supposed
to be done, and was not aware of any need for additional approvals. (*Id.*, ¶ 5.)

1 Some additional work was done on the island. Among other things, a dock was secured to
2 piles that were already in place. The dock was provided by BCDC, and is subject to a lease from the
3 California State Lands Commission. (*Id.*, ¶ 6.) Fourteen trees were planted and four small
4 semicircular ponds were dug to enhance duck habitat. (*Id.*) Some grasses were mowed. (*Id.*)

5 **E. The Work Did Not Cause Tidal Marsh To Dry Out**

6 The Order appears to have been motivated, at least in substantial part, by the misconception
7 that the levee work “cut off crucial tidal flow to the interior of the Site, thereby drying out the Site’s
8 former tidal marsh areas”. (Order at 2, ¶ 8.) But the levee work has not dried out the interior of the
9 island; on the contrary, the interior is now wetter than it used to be.

10 The best available evidence consists of two sets of photographs. First, there are two infrared
11 photographs taken in 2013 (before the levee work was done) by the U.S. National Oceanographic
12 and Atmospheric Administration (“NOAA”) at high water and mean lower low water. (Sweeney
13 Decl., Exhibits 2 and 3.) These show that water was present in the ditches and interior channels of
14 the island, but there was no water present in any vegetated areas.

15 In fact, there is remarkably little difference between the two photographs, no doubt
16 attributable to the fact that the ditches and channels on the island generally have vertical sides, which
17 means that their width does not increase or decrease during the tidal cycle.

18 Second, there are aerial photographs, obtained from Google Earth, from April 2013 and
19 April 2015, showing the island before and after the levee work. (Am. Bazel Decl., Exhibits 4 and 5.)
20 These photographs show no sign of vegetation in the ditches and interior channels, either before or
21 after.

22 In both photographs, the majority of the vegetation is brown, even though the photographs
23 were both taken in April. The 2013 photograph has some areas that are green, but those seem to be
24 the result of seasonal rains rather than tidal influence. There are, for example, areas of green on top
25 of the existing levees, and in places disconnected from any ditch or channel. A Google Earth
26 photograph from September 2008 shows that the interior of the island was almost completely brown.
27 (Am. Bazel Decl., Exhibit 12.)
28

1 Most of the island may be what the Suisun Marsh Protection Plan calls “lowland grasslands”
2 (“a ‘transition zone’...which supports a mixture of plants common to both the wetlands and the
3 upland grasslands”) rather than tidal marshes (“which occur on the edges of the bays and sloughs,
4 are not subjected to habitat management programs, but are exposed to the natural daily tidal
5 rhythm”). (Suisun Marsh Protection Plan at 11.) Virtually all of the island is firm enough so that
6 motor vehicles can be driven across it. (Sweeney Decl., ¶ 8.) And, other than the improved ditches
7 and water levels inside the levees, conditions at the island are generally unchanged from before the
8 work at issue. (*Id.*, ¶ 14.)

9 In any case, the Google Earth photographs leave no doubt that the interior of the island has
10 not dried up because of the levee work. The aerial photographs plainly show that in 2015, the
11 ditches were larger and therefore held more water than they did in 2013, and the inland channels
12 held as much water if not more. Because of this additional water, the Order is wrong when it says
13 that the levee work “cut off crucial tidal flow to the interior of the Site, thereby drying out the Site’s
14 former tidal marsh areas”. (Order at 2, ¶ 8.) The Order is also wrong because the aerials show that
15 virtually the entire inland area dried up before the levee work was performed, and there is no sign of
16 any additional drying up after the levee work was done.

17 **IX. POINTS AND AUTHORITIES**
18 **IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION**

19 **A. The Regional Board Violated Petitioner’s Due Process Rights By Refusing To**
20 **Hold A Hearing**

21 The Regional Board violated Petitioner’s Constitutional rights by refusing to hold a hearing.
22 “Due process principles require reasonable notice and opportunity to be heard before governmental
23 deprivation of a significant property interest.” (*Horn v. County of Ventura* (1979) 24 Cal.3d 605,
24 612.) Here there is governmental deprivation of at least two significant property interests:
25 Petitioner’s use and enjoyment of its real property, and the deprivation of substantial amounts of
26 money.⁶

27 ⁶ The hearing requirement applies to “‘adjudicatory’ matters in which the government’s action
28 affecting an individual is determined by facts peculiar to the individual case”, as opposed to
“‘legislative’ decisions which involve the adoption of a broad, generally applicable rule of conduct
on the basis of general public policy.” (*Horn* at 613.) Here the Order is indisputably individual and
adjudicatory, rather than general and legislative.

1 In *Horn*, the California Supreme Court held that property owners meet the substantial-
2 deprivation standard when land-use decisions on *adjacent* parcels substantially interfere with their
3 access to their own property. (*Id.* at 615.) Here the deprivation goes far beyond that. Petitioner is
4 being prohibited from restoring and maintaining a duck club on its property, even though there has
5 been a duck club there, and the property has been approved for use as a duck club. (*See* Sweeney
6 Decl., Exhibit 1.) The Order requires Petitioner to “restore tidal circulation to all of the tidal
7 channels...that existing prior to the...levee construction activities”. (Am. Bazel Decl., Exhibit 1 at
8 5.) This requirement for tidal circulation prevents the property from being used a duck club, which
9 requires that the tide gates be closed, and that the island be flooded, so that it can be used to provide
10 duck habitat and grow plants that provide food for ducks. (Sweeney Decl., ¶ 10.)

11 The Order also requires that the Petitioner provide “compensatory mitigation habitat”. (Ex. 1
12 at 5.) Mitigation habitat costs hundreds of thousands of dollars per acre. (Sweeney Decl., ¶ 13.)
13 Money is a property interest protected by due process. (*See Mathews v. Eldridge* (1976) 424 U.S.
14 319, 332 (due process applies to terminations of Social Security disability benefits).)

15 In July 2015, in the *West Side Irrigation District* case (copy attached as Am. Bazel Decl.,
16 Exhibit 6), the Sacramento Superior Court invalidated letters sent out by the State Board—letters
17 that commanded far less than the Order—on the grounds they were issued “without any sort of pre-
18 deprivation hearing”. (*Id.* at 5.) The court distinguished between letters that are “coercive in
19 nature” (*id.* at 2), which require a hearing, and purely informational letters, which do not. Here the
20 Order is indisputably coercive in nature. The court concluded that “[e]very day the Letter remains in
21 its current form constitutes a violation of those constitutional rights.” (*Id.*)

22 Here, as in *West Side Irrigation District*, there was no pre-deprivation hearing. (Am. Bazel
23 Decl., ¶ 15.) A pre-deprivation hearing should have been held.

24 State Board Order No. WQ 86-13, *In the Matter of the Petition of BKK Corporation*,
25 acknowledges that a hearing must be held, but concludes that the hearing can be held after an order
26 is issued:

27 The Porter-Cologne Water Quality Control Act...does not require notice and
28 an opportunity to be heard before issuance of a cleanup and abatement order.
Due process is provided by an opportunity for a hearing after the order is
issued.

1 (*Id.* at 4.)

2 Where a state’s interest is sufficiently compelling, the requirements of
3 procedural due process may be satisfied by a hearing provided after issuance
4 of an administrative order....

5 (*Id.* at 6.)⁷

6 Here, there were no interests that were “sufficiently compelling” to postpone a pre-
7 deprivation hearing. This situation is quite different from those in which a municipality or industry
8 is continually discharging infectious or toxic materials that threaten the public health. The levee
9 work was completed last year. (Sweeney Decl., ¶ 4.) Petitioner is not proceeding with the work,
10 which has been put on hold. (*Id.*, ¶¶ 9, 14.) Other than the improved ditches and water levels inside
11 the levees, conditions at the island are generally unchanged from before the work at issue. (*Id.*,
12 ¶ 14.) Because there was no compelling need to act in haste, there was time for a pre-deprivation
13 hearing.

14 There is certainly time for a post-deprivation hearing. Counsel for Petitioner requested a
15 hearing twice. (Am. Bazel Decl., ¶ 16 and Exhibit 13.) Nevertheless, the Regional Board has not
16 held a hearing on this matter. (Sweeney Decl., ¶ 12.)

17 A hearing here would have benefited the Regional Board as well as Petitioner. It would have
18 required the Regional Board to collect and organize its evidence—the Regional Board has not
19 presented any evidence to Petitioner other than what is in the Order (Am. Bazel Decl., ¶ 17)—which
20 would help protect the Regional Board from this petition. A hearing would also have given the
21 Regional Board to hear Petitioner’s side of the story, which should have prevented it from acting on
22 mistaken assumptions. (See section VIII.E above.)

23 The Regional Board’s refusal to provide a hearing is a violation of the United States
24 Constitution. On this ground alone, the Order should be rescinded and the matter remanded to the
25 Regional Board for a hearing.

26 In the *Sackett* case, a unanimous United State Supreme Court rejected a legal argument that
27 “would have put the property rights of ordinary Americans entirely at the mercy of Environmental

28 ⁷ *BKK* notes that the State Board lacks authority to declare a statute unconstitutional, but no
determination of unconstitutionality is required here. Nothing in Water Code § 13304 prohibits the
Regional Board from holding a hearing before or after it has issued a cleanup and abatement order.

1 Protection Agency (EPA) employees.” (*Sackett v. EPA* (2012) 132 S.Ct. 1367, 1375, Alito, J,
2 concurring.) “In a nation that values due process, not to mention private property, such treatment is
3 unthinkable.” (*Id.*)

4 Here the violation of due process is even more unthinkable. Due process indisputably calls
5 for a hearing. There is no principled argument to the contrary. And yet the Regional Board
6 continues to refuse.

7 **B. The Regional Board Violated Petitioner’s Due Process Rights By Engaging In**
8 **Ex Parte Communications And Violating The Separation-Of-Functions Rule**

9 “When, as here, an administrative agency conducts adjudicative proceedings, the
10 constitutional guarantee of due process of law requires a fair tribunal.” (*Morongo Band of Mission*
11 *Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 742.) Consistent with these
12 due-process requirements the California Administrative Procedure Act “generally prohibits ex parte
13 communications...and requires ‘internal separation of functions’”. (*Id.* at 742, citing *Department of*
14 *Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1, 18,) State Board staff have provided extensive answers to questions about these requirements.⁸

15 Here, Regional Board staff have informed Petitioner that a prosecution team and advisory
16 team were formed. Petitioner was never given any notice of this division, and no opportunity to
17 communicate with the advisory team or the decision maker before the Order was issued. (Am. Bazel
18 Decl., ¶ 18.) The fact that the Order was issued provides evidence that there must have been
19 communications between the prosecution team and the decision makers. These communications,
20 which took place without the knowledge or participation of Petitioner, were impermissible ex parte
21 communications. They were also a violation of the separation-of-functions requirement. Petitioner
22 has been denied a fair hearing.

23 “In general, if a party has not received a proper administrative hearing, the matter is
24 remanded back to the agency to provide ‘a full and fair hearing.’” (*Sabey v. City of Pomona* (2013)
25 215 Cal.App.4th 489, 500, quoting *English v. City of Long Beach* (1950) 35 Cal.2d 155, 160.) The
26

27
28 _____
⁸ Ex Parte Questions And Answers, www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf

1 hearing must not be held before someone whose “role as a neutral arbitrator has been compromised”.
2 (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 99.)

3 Because of the ex parte communications, the Constitutional rights of Petitioner and its
4 owners have been violated. The Order should be rescinded, and the matter remanded for a new
5 hearing by an appropriate decision maker other than the Executive Officer, who has been tainted by
6 ex parte communications.

7 **C. The Regional Board Violated The Void-For-Vagueness Doctrine**

8 The Order requires the submission of reports “acceptable to the Regional Water Board
9 Executive Officer”. Because this provision makes the required actions subject to a person’s
10 subjective approval, it violates the void-for-vagueness doctrine:

11 [T]he void-for-vagueness doctrine requires that a penal statute define the
12 criminal offense with sufficient definiteness that ordinary people can
13 understand what conduct is prohibited and in a manner that does not
encourage arbitrary and discriminatory enforcement.

14 (*Kolender v. Lawson* (1983) 461 U.S. 352, 357.)

15 In *Kolender*, a California statute required a person stopped by policy to provide “credible and
16 reliable” identification. (*Id.* at 359.) The statute left, to the officer on the beat, the determination of
17 whether the identification was sufficiently credible and reliable. (*Id.* at 360.) The United States
18 Supreme Court concluded that the statute was “unconstitutionally vague on its face because it
19 encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect
20 must do in order to satisfy the statute.” (*Id.* at 361.)

21 Earlier this year, the Supreme Court re-stated the rule for unconstitutional vagueness:

22 The Fifth Amendment provides that “[n]o person shall . . . be deprived of life,
23 liberty, or property, without due process of law.” Our cases establish that the
24 Government violates this guarantee by taking away someone’s life, liberty, or
property under a criminal law so vague that it fails to give ordinary people fair
notice of the conduct it punishes, or so standardless that it invites arbitrary
enforcement.

25 (*Johnson v. United States* (2015) 135 S.Ct. 2551, 2556, citing *Kolender*.)

26 In *Johnson*, the statute provided, in a “residual clause”, for more serious punishment if the
27 crime “otherwise involves conduct that presents a serious potential risk of physical injury to
28 another.” (*Id.* at 2555-2556.) The Supreme Court concluded “that the indeterminacy of the wide-

1 ranging inquiry required by the residual clause both denies fair notice to defendants and invites
2 arbitrary enforcement by judges.” (*Id.* at 2556)

3 Here the Order relies on penal statutes and specifically threatens criminal liability. (Order at
4 6; Water Code §§ 13269, 13387.)

5 To the extent the statutes authorize an Order requiring reports subjectively “acceptable” to a
6 single person, they are unconstitutionally vague as applied. If the statutes themselves do not
7 authorize subjectively acceptable reports, then the Executive Officer did not have authority to issue
8 the Order.

9 **D. The Regional Board Violated The Conformity Requirement Of The**
10 **Suisun Marsh Preservation Act**

11 The Suisun Marsh Preservation Act imposes a “judicially enforceable” requirement on state
12 agencies to act in conformity with the act and the Suisun Marsh Protection Plan:

13 **Imposition of Judicially Enforcement Duty on State Agencies.**

14 (a) This division imposes a judicially enforceable duty on state agencies to
15 comply with, and to carry out their duties and responsibilities in conformity
16 with, this division and the policies of the protection plan.

17 (PRC § 29302.)

18 The Order violates this requirement because it is not “in conformity” with the act and the
19 plan. The plan concludes that duck clubs are a “unique resource” and “a vital component of the
20 wintering habitat for waterfowl migrating south”. (See section VIII.A above.) It says that duck
21 clubs should be encouraged, and that land and water areas should be managed to provide “habitat
22 attractive to waterfowl” and to improve “levee systems”. (*Id.*)

23 The act specifies that individual management plans should be prepared for each duck club,
24 and that development consistent with the plan can be implemented without a marsh development
25 permit. In short, the act and plan are very pro-duck-club.

26 The Order is very anti-duck-club. It concludes that the improvement of levees at the property
27 is a condition of pollution—even though the Suisun Marsh Protection Plan specifically says that land
28 and water areas should be managed to improve “levee systems”, and the individual management
plan specifically calls for levee repair and maintenance at this very island. (Order at 3, ¶ 12; see
section VIII.A above.) The Order requires that tidal circulation be restored, even though the

1 individual management plan calls for seasonal flooding, which would limit tidal circulation. (Order
2 at 5, ¶ 2, see section VIII.A above.)

3 Because the Order is so strongly anti-duck-club, and because it would prohibit actions that
4 the Suisun Marsh Preservation Act and Suisun Marsh Protection Plan specifically call for, the Order
5 is not “in conformity” with the Act and Plan. It thereby violates the act.

6 **E. The Regional Board Violated The Primary Responsibility Provision Of The**
7 **Suisun Marsh Preservation Act**

8 The Order asserts that Petitioner has caused a condition of pollution on tidelands. But the
9 State Lands Commission claims state ownership of the tidelands at the island, as established by its
10 entering into a lease with Petitioner for the dock at the island. (See section VIII.D above.) The
11 Suisun Marsh Preservation Act gives State Lands primary responsibility over lands under its
12 jurisdiction:

13 **Responsibilities of State Lands Commission.**

14 (a) The State Lands Commission shall have the primary responsibility...for
15 carrying out the management recommendations in the protection plan on lands
16 owned by the state and under the jurisdiction, control, or supervision of the
17 State Lands Commission, including tidelands, submerged lands, swamp and
18 overflowed lands, and beds of navigable rivers and streams.

19 (PRC § 29307.)

20 The Order violates this provision because it takes primary responsibility for management of
21 the tidelands at issue away from State Lands.

22 The Order also violates the Suisun Marsh Preservation Act by creating duplication and
23 conflict, contrary to the act:

24 **Minimizing Duplication and Conflicts.**

25 It is the intent of the Legislature to minimize duplication and conflicts among
26 existing state agencies carrying out their regulatory duties and responsibilities
27 in connection with the subject matter of this division.

28 (PRC § 29300.)

F. The Regional Board Violated Water Code § 13304 And Therefore Lacked
Authority To Issue The Order

The Order asserts that it has authority under Water Code § 13304 because Petitioner

1 has caused or permitted waste to be discharged or deposited where it has been
2 discharged into waters of the State and created or threatens to create a
condition of pollution.

3 (Order at 3, ¶ 12.) This assertion of authority is consistent with Water Code § 13304(a), which
4 provides for the issuance of a cleanup and abatement order when a person has caused waste to be
5 discharged into waters of the state, and that waste creates a condition of pollution:

6 A person who has discharged or discharges waste into the waters of this state
7 in violation of any waste discharge requirement or other order or prohibition
8 issued by a regional board or the state board, or who has caused or permitted,
9 causes or permits, or threatens to cause or permit any waste to be discharged
10 or deposited where it is, or probably will be, discharged into the waters of the
state and creates, or threatens to create, a condition of pollution or nuisance,
11 shall, upon order of the regional board, clean up the waste or abate the effects
of the waste, or, in the case of threatened pollution or nuisance, take other
12 necessary remedial action, including, but not limited to, overseeing cleanup
and abatement efforts.

11 The Regional Board lacks authority under Water Code § 13304 to issue the Order both
12 because the work at issue is not a condition of pollution, and because the material placed is not
13 waste.⁹

14 **1. The Work Is Not A Condition Of Pollution Because It Promotes, Rather**
15 **Than Harms, The Beneficial Uses**

16 Water Code § 13050(1) provides, in pertinent part, that:

17 (1) "Pollution" means an alteration of the quality of the waters of the state by
waste to a degree which unreasonably affects either of the following:

18 (A) The waters for beneficial uses.

19 (B) Facilities which serve these beneficial uses.

20 Here the Order identifies the applicable beneficial uses as those for Suisun Bay. (Order at 1,
21 ¶ 4.) But the basin plan establishes beneficial uses for Grizzly Bay. (Water Quality Control Plan
22 (Basin Plan) for the San Francisco Bay Basin¹⁰, Table 2-1 (Existing and Potential Beneficial Uses of
23 Water Bodies in the San Francisco Bay Region), Suisun Basin.) Because Point Buckler borders or is
24 within Grizzly Bay, the beneficial uses for that water are apply. Those uses are: commercial and
25 sport fishing (COMM), estuarine habitat (EST), fish migration (MIGR), preservation of rare and
26

27 ⁹ The Order does not assert that it has authority under § 13304 because of a violation of waste
discharge requirements or other order or prohibition issued by a regional board. Nor does it assert
28 that Petitioner has caused a condition of nuisance.

¹⁰ http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml

1 endangered species (RARE), wildlife habitat (WILD), water contact recreation (REC1), and
2 noncontact water recreation (REC2). (*Id.*; see section 2.1 (defining beneficial uses).)

3 The principal effect of the work at issue is to *promote*, rather than harm, noncontact
4 recreation and wildlife habitat. Wildlife habitat will be promoted because the levee work allows the
5 island to be managed as a duck club. Now that the levees are in place, the water level can be raised
6 above high-tide, so that pond areas within the island can be disced, flooded, and managed to grow
7 vegetation and provide habitat the ducks prefer. (Sweeney Decl., ¶¶ 9-10.) Noncontact recreation
8 will be promoted because the duck club is a recreational facility.

9 Although the Order recites that the work at issue has “adversely impacted” several beneficial
10 uses, the Regional Board has provided no evidence that the work at issue “unreasonably affects” any
11 beneficial use, which is required to show a condition of pollution. The Order is based on the
12 assumption that the levees dried out vegetation on the island, but this assumption is false. (See
13 section VIII.E above.) The Order’s other assertions of adverse effect appear to be nothing more than
14 speculation.

15 Nor has the Regional Board provided any evidence that the work at issue unreasonably
16 effects “[f]acilities which serve these beneficial uses”. The Order is itself a “condition of pollution”
17 because it unreasonably interferes with the facilities—the levees—that serve the beneficial uses of
18 wildlife habitat and recreation.

19 Because the work at issue has not caused a condition of pollution, the Regional Board lacks
20 authority under Water Code § 13304 to issue the Order.

21 **2. The Work Is Not A Condition Of Pollution Because It Is Authorized By**
22 **The Suisun Marsh Preservation Act**

23 It should go without saying that an activity is not a condition of pollution when that work has
24 been authorized by the Legislature. Here the Legislature has authorized the use of Suisun Marsh for
25 duck clubs, and has established a procedure that has specifically authorized Petitioner to conduct the
26 work at issue. (See section VIII.B above.) Moreover, the Legislature has prohibited the Regional
27 Board from acting inconsistently with the policies and provisions of that act and plan. (See section
28 IX.D above.)

1 Note that the question here is not whether the Regional Board can impose permitting
2 requirements in addition to those imposed by the Suisun Marsh Preservation Act. If a project has not
3 been fully permitted, the Regional Board may require that work cease until the relevant permits are
4 obtained. But a cleanup and abatement order is not a stop-work order. For there to be a legitimate
5 cleanup requirement here, there must be a condition of pollution—not just a condition in which an
6 approvable project has not yet obtained all its permits.

7 Because the work at issue here has been authorized by the Legislature, it cannot be a
8 condition of pollution. The Regional Board lacks authority under Water Code § 13304 to issue the
9 Order.

10 **3. The Work Is Not A Condition Of Pollution Because It Comes Within**
11 **Permits Issued By The Corps Of Engineers and Certified By The**
12 **Regional Board**

13 The San Francisco District of the U.S. Army Corps of Engineers has issued Regional General
14 Permit 3 (“RGP3”), which in accordance with the federal Clean Water Act authorizes, among other
15 things, maintenance and creation of interior ditches, maintenance and repair of levees, creating
16 drainage swales and raising the interior of managed wetlands, discing, pump installation,
17 constructing cofferdams, maintaining and replacing water control structures, installing new water
18 control structures, and maintenance and repair of salinity control gates. (Am. Bazel Decl.,
19 Exhibit 14.)

20 In accordance with Clean Water Act § 401, the Regional Board has certified the permit as
21 being in compliance with California law. (Am. Bazel Decl., Exhibit 15.) This certification explains
22 that it covers “158 privately owned duck clubs represented by SRCD”. (*Id.* at 2.) Point Buckler is
23 one of the duck clubs represented by the Suisun Resource Conservation District.¹¹ The certification
24 specifies that the “total amount of annual excavation and temporary fill for the project would vary
25

26 ¹¹ See PRC § 9962(a) (SRCDC has “primary local responsibility for regulating and improving water
27 management practices on privately owned lands within the primary management area of the Suisun
28 Marsh in conformity with [the Suisun Marsh Preservation Act] and the Suisun Marsh Protection
Plan”); Sweeney Decl., Exhibit 1 (individual management plan submitted to BCDC by SRCDC for
club 801, Annie Mason Point Club); Am. Bazel Decl., Exhibit 9 (current list of SRCDC club names
and numbers includes club 801, identified as Buckler Point, Inc).

1 from year to year, but would be limited to a maximum of 443,000 cubic yards of earthen material.”
2 (*Id.* at 3.)

3 Because the Corps and the Regional Board have provided a general authorization for the
4 work at issue here, the work cannot be a “condition of pollution”. If the whopping “443,000 cubic
5 yards of earthen material” approved by the Regional Board created a condition of pollution, the
6 Regional Board would not have been authorized to issue the certification. (*See* Water Code
7 § 13263(a) (requiring regional boards to implement basin plans).)

8 Since those 443,000 cubic yards of earthen material do not create a condition of pollution,
9 why does the work at Point Buckler? The Regional Board does not say, and therefore does not
10 establish a condition of pollution. The Regional Board should, at the very least, have explained why
11 the work at Point Buckler is so different from the work elsewhere that it cannot be tolerated.

12 The Regional Board has also issued a 401 certification for levee maintenance dredging.
13 (Am. Bazel Decl., Exhibit 16.) This certification applies to 133 miles of levees, and allows a
14 maximum of one million cubic yards of dredged material. (*Id.* at 2.) These quantities are obviously
15 orders of magnitude greater than the work at issue. The Regional Board has not explained why, if
16 these activities do not create a condition of pollution, the work at issue does.

17 It does not matter whether the work at issue has fully complied with the requirements of
18 RGP3 and the board’s certification. If the work at Buckler Island is not fully permitted, then the
19 Regional Board may have authority to stop work pending that permitting. But because the work has
20 not created a condition of pollution, the Regional Board does not have authority to issue a cleanup
21 and abatement order.

22 **4. The Work Is Not A Condition Of Pollution Because It Is A**
23 **Mitigation Project Required by CEQA**

24 CEQA mitigation measures must be “fully enforceable”:

25 [N]o public agency shall approve or carry out a project for which an
26 environmental impact report has been certified which identifies one or more
27 significant effects on the environment that would occur if the project is
28 approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

1 (1) Changes or alterations have been required in, or incorporated into, the
2 project which mitigate or avoid the significant effects on the environment.

3 (PRC § 21081.)

4 (a) When making the findings required by paragraph (1) of subdivision (a) of
5 Section 21081..., the following requirements shall apply:

6 (1) The public agency shall adopt a reporting or monitoring program for the
7 changes made to the project or conditions of project approval, adopted in
8 order to mitigate or avoid significant effects on the environment.

9 (b) A public agency shall provide that measures to mitigate or avoid
10 significant effects on the environment are fully enforceable through permit
11 conditions, agreements, or other measures. Conditions of project approval
12 may be set forth in referenced documents which address required mitigation
13 measures....

14 (PRC § 21081.6.)

15 Here, the work at Point Buckler is a mitigation measure required by CEQA. In 1984, it was
16 identified by DWR as mitigation for Delta diversions. (See section VIII.C above.) In 2005, it was
17 incorporated into the Suisun Marsh Mitigation Agreement of 2005. (*Id.*) In 2013, the Regional
18 Board relied on that agreement—and on its mitigation provisions—when it certified RGP3. The
19 Regional Board specifically found that the “[p]ermanent and temporary impacts related to the
20 current operation and maintenance of managed wetlands in the proposed Project area have been
21 offset by the Suisun Marsh Mitigation Agreement of 2005.” As a result, Point Buckler has been
22 identified as required mitigation for two projects: DWR’s water diversions from the Delta, and the
23 long list of maintenance, repair, and construction activities covered by RCP3 and the Regional
24 Board’s certification.

25 Mitigation is, by definition, a measure that must be undertaken to benefit the environment
26 and thereby counter or make up for the adverse environmental effects of the project being approved.
27 Because mitigation *benefits* the environment, it cannot be a condition of pollution. Because CEQA
28 requires mitigation measures to be implemented, the Regional Board lacks the authority to issue a
cleanup and abatement order that prevents mitigation from being implemented.

For these reasons—the work at issue benefits and implements the beneficial uses of wildlife
habitat and noncontact recreation, the work has been authorized by the Legislature in the Suisun
Marsh Preservation Act and Suisun Marsh Protection Plan, and the work is a mitigation measure that

1 must be implemented under CEQA—the work at issue cannot be a “condition of pollution”. The
2 Regional Board therefore lacks authority to issue the Order.

3 **5. The Construction Material Is Not “Waste”**

4 The Porter-Cologne Act, which was enacted in 1969, follows from the federal Water Quality
5 Act of 1965. (Am. Bazel Decl., Exhibit 8.) The latter provided for the establishment of “water
6 quality criteria” and for a “plan for the implementation and enforcement of the water quality
7 criteria”, which jointly would be a state’s “water quality standards”. (*Id.* at 907-908.) The Porter-
8 Cologne provided for the development of “water quality control plans” that include “water quality
9 objectives”. (Water Code §§ 13050(j), 13164, 13170.) The Water Quality Act of 1965 provided for
10 the regulation of the “discharge of matter... which reduces the quality of such waters below the
11 water quality standards”. (Am. Bazel Decl., Exhibit 8 at 909.) The California Legislature, however,
12 chose not to use a term as broad as “matter”. Instead, it limited authority under the Porter-Cologne
13 Act to the discharge of *waste*. As noted above, Water Code § 13304 applies only to discharges of
14 *waste*.

15 Waste means waste. The Porter-Cologne Act defines “waste” as follows:

16 “Waste” includes sewage and any and all other waste substances, liquid, solid,
17 gaseous, or radioactive, associated with human habitation, or of human or
18 animal origin, or from any producing, manufacturing, or processing operation,
including waste placed within containers of whatever nature prior to, and for
purposes of, disposal.

19 (Water Code § 13050(d).) This definition makes clear that the statutory term “waste” includes
20 “all...waste substances”, including “waste placed within containers”, but it does not include
21 anything that is not waste.

22 The scope of the Porter-Cologne Act is therefore quite different from the federal Clean Water
23 Act, which regulates the discharge of a “pollutant”, and defines that word to include much more than
24 wastes. (33 USC §§ 1311(a), 1362(6).) Cases interpreting the discharge of a pollutant under the
25 Clean Water Act are not relevant here.

26 What is relevant, however, is the California Supreme Court’s discussion of the word “waste”
27 in a case involving the collection of discarded recyclables:

1 The commonly understood meaning of “waste” is something discarded
2 “as worthless or useless.” (Amer. Heritage Dict. (1985) p. 1365,
col. 1; 19 Oxford English Dict. (2d ed. 1989), p. 958, col. 1.)

3 (*Waste Management of the Desert v. Palm Springs Recycling Center, Inc.* (1994) 7 Cal.4th 478,
4 485.)

5 “Discard” means “to throw away.” (Amer. Heritage Dict. (2d college
6 ed. 1982) p. 402, col. 1.) That “discard” connotes throwing away
7 or abandoning has been well recognized in cases dealing with waste
and related issues. (*American Min. Congress v. U.S. E.P.A.* (D.C. Cir.
1987) 824 F.2d 1177, 1184 [U.S. App.D.C. 197]....)

8 (*Id.* at 486.) The *American Mining Case* cited by the California Supreme Court is also quite
9 relevant, because it involves an attempt by EPA to regulate “secondary materials reused within an
10 industry's ongoing production process”. (*American Mining Congress*, 824 F.2d at 1178.) In its
11 interpretation of the federal Resource Conservation and Recovery Act (“RCRA”), the DC Circuit
12 concluded that that “‘solid waste’ (and therefore EPA's regulatory authority) [is] limited to materials
13 that are ‘discarded’ by virtue of being disposed of, abandoned, or thrown away.” (*Id.* at 1193.)

14 Here, Petitioner has not thrown anything away. Instead, it has used onsite material to
15 maintain and restore valuable improvements to the property, i.e. its levees and ditches. Just as no
16 one would seriously contend that shingles nailed on the roof of a house are a waste, or that a
17 cinderblock wall built to prevent flooding is a waste, no one should contend that the placement of
18 material on Point Buckler was a waste.

19 Because the material was kept onsite as part of valuable improvements, it was not a waste.
20 The *Lake Madrone* case, in which sediment was found to be a waste, is readily distinguishable.
21 (*See Lake Madrone Water Dist. v. State Water Resources Control Bd.* (1989) 209 Cal.App.3d 163.)
22 In that case, silt was flushed from behind a dam into the creek below. (*Id.* at 165-166.) The District
23 argued that the silt was not a waste because it was “not discharged from any producing,
24 manufacturing, or processing operation, or from land owned by the District.” (*Id.* at 168.) The court
25 rejected this argument. It concluded that the Porter-Cologne Act “was intended to include all
26 interpretations of ‘sewage,’ ‘industrial waste’ and ‘other waste’”. (*Id.* at 169.) But it did not suggest
27 that the act was intended to cover anything other than waste.

1 Ultimately, the court reasoned that the “dam receives a natural substance—silt—which, in its
2 unconcentrated form in a creek is innocuous and, by furnishing a man-made artificial location for its
3 concentration, changes the innocuous substance into one that is deadly to aquatic life.” (*Id.* at 169-
4 170.) This concept—that silt can be a waste in some situations but not in others—is consistent with
5 *Waste Management*, in which the California Supreme Court made clear that an item (in that case a
6 recyclable) is a waste if it is thrown away, and is not a waste if it is sold. (*Waste Management*,
7 7 Cal.4th at 486.)

8 Because the work at issue here was not the discharge of a “waste”, the Regional Board does
9 not have authority to issue the Order.

10 **G. The Factual Assertions In The Order Are Not Supported By Substantial**
11 **Evidence**

12 The Order should also be overturned because the factual assertions are not supported by
13 substantial evidence. The only harm specified is the alleged drying out of the interior of the island.
14 (See section VIII.E above.) But the Regional Board did not consider the evidence readily available
15 in Google Earth photos—evidence that directly contradicts the assertion that the island is tidal marsh
16 that has been dried up. (*Id.*)

17 Although the Order includes other conclusory assertions of harm to beneficial uses, no
18 evidence is cited. These assertions are, therefore, not supported by substantial evidence.

19 **H. The Demand For Restoration Of Tidal Circulation Is An Abuse Of The Regional**
20 **Board’s Discretion**

21 The Regional Board abused its discretion by demanding that tidal circulation be restored to
22 the interior of the island. To flood the duck ponds, Petitioner needs to close the tide gates and pump
23 water into the island. By requiring tidal circulation, the Regional Board is prohibiting the duck club.

24 But the duck club is either permitted or eminently permissible. The Regional Board has not
25 considered the statutes and other legal requirements favoring the duck club, and therefore has not
26 considered an important aspect of the problem. This is an abuse of discretion.

27 The Regional Board also abused its discretion by relying on a false assumption, and by not
28 carefully evaluating the available scientific information. The Order appears to have been motivated
by the false assumption that the work at issue has dried out interior tidal marshes on the island. (See

1 section VIII.E above.) A review of available Google Earth aerials, however, shows no evidence to
2 support this assumption.

3 **X. TRANSMITTAL OF PETITION TO REGIONAL BOARD**

4 A copy of this petition will be transmitted to the Regional Board by e-mail concurrently with
5 its filing with the State Board.

6 **XI. REQUEST FOR STAY**

7 Petitioner requests a stay as described in section VII above.

8 **A. Substantial Harm To The Petitioner**

9 If Petitioner is required to proceed comply with the Order while it is being reviewed by the
10 State Board, Petitioner will be substantially harmed. It would have to pay substantial amounts of
11 money to obtain the mitigation demanded. Mitigation banks charge approximately \$100,000-
12 200,000 per acre. The levee work cost hundreds of thousands of dollars. If it or any portion of it
13 had to be removed, that would harm Petitioner by depriving it of valuable property improvements.
14 Additional costs in the hundreds of thousands of dollars would be incurred if substantial removal
15 were required. (Sweeney Decl., ¶ 13.)

16 Petitioner would be harmed because the Constitutional rights of itself and its members are
17 being violated by the requirements of the Order, which was issued without a hearing. Petitioner is
18 also being harmed by being prohibited from using the island for a duck club, which is what is has
19 historically been used for and which benefits the public and the environment. (*Id.*)

20 Requiring tidal flows at the island would harm the vegetation and habitat that has been
21 created by the elevated water levels that have existed for more than a year now. (*Id.*)

22 **B. No Substantial Harm To Other Persons Or The Public Interest**

23 There would be no substantial harm to other persons or the public interest if a stay is granted.
24 The duck club restoration activities have been placed on hold. The public interest would be
25 promoted by a stay because the Order threatens all duck clubs in the Suisun Marsh, which must
26 maintain their levees and internal ditches. Other than the improved ditches and water levels inside
27 the levees, conditions at the island are generally unchanged from before the work at issue. Petitioner
28 is not aware of any harm to any sensitive species resulting from work at issue. (*Id.*, ¶ 14.)

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C. Substantial Questions Of Fact Or Law

Substantial questions of fact or law exist as described in section IX above.

XII. CONCLUSION

Petitioner requests that the Order be stayed, and that the State Board act on the stay by October 30, 2015. If the State Board cannot issue a stay by that time, Petitioner requests that the State Board act to postpone the submissions required by the Order until the State Board can act on the stay request.

Petitioner also requests that the State Board should rescind the Order on the grounds that it violates due process, it violates the Suisun Marsh Preservation Act and Suisun Marsh Protection Plan, it violates the Porter-Cologne Act, it violates CEQA, it violates the void-for-vagueness doctrine, and it is an abuse of the Regional Board's discretion.

DATED: October 12, 2015

BRISCOE IVESTER & BAZEL LLP



By: _____
Lawrence Bazel
Attorneys for Point Buckler Club, LLC

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LAWRENCE S. BAZEL (114641)
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Attorneys for Petitioner Point Buckler Club, LLC

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the matter of:

CLEANUP AND ABATEMENT ORDER
NO. R2-2015-0038;
POINT BUCKLER CLUB, LLC

No. _____

DECLARATION OF
JOHN D. SWEENEY

I, John D. Sweeney, declare as follows:

1. I am manager of Point Buckler Club, LLC (the "Club"). I have personal knowledge of the facts in this declaration, and if called as a witness could competently testify to them.
2. Attached as Exhibit 1 to this declaration is an accurate copy of the individual management plan for the Club, which at the time was known as Annie Mason Point Club. I received this document from the staff of the San Francisco Bay Conservation and Development Commission ("BCDC"), who informed me that it was the certified plan for the island.
3. I have spoken with Jim Taylor, who owned the Annie Mason Point Club at the time the individual management plan was prepared. He told me that the property was operated as a duck club, and that the California Department of Water Resources ("DWR") provided a pump that was used to help flood the duck ponds. I have observed that there is now on the island an old pump that could be the pump DWR provided.

4. During the dry season of 2014, an excavator was used to deepen and widen the existing ditches, and to place the material removed on the existing levees. In some places, the existing levee had been eroded away, and a new levee and ditch were created inside the old location. Places where the levee had fully or partly breached—in two locations, the tide gates were in place, but the levee on top of them had eroded away—were repaired. The resulting levees are approximately 2-3 feet above the surrounding land. Of the two tide gates that had been in place, one is now functioning, and the other needs to be repaired.

5. I understood, from conversations with the seller of the island, that maintenance of the levees was supposed to be done. I was not aware, at the time of the levee work, of any need for additional approvals.

6. Some additional work was done on the island. Among other things, a dock was secured to piles that were already in place. The dock was provided by BCDC, and is subject to a lease from the California State Lands Commission. Fourteen trees were planted and four small semicircular ponds were dug to enhance duck habitat. Some grasses were mowed.

7. Attached as Exhibit 2 and Exhibit 3 are portions (showing the island) of two aerial photographs obtained at my direction from the U.S. National Oceanic and Atmospheric Administration (“NOAA”). According to the information on the photographs, both were taken in 2013; Exhibit 2 was taken at mean lower low water; and Exhibit 3 was taken at mean high water.

8. Virtually all of land on the island is firm enough so that motor vehicles can be driven across it.

9. The Club would like to restore the duck club on the island. The levee work was done for the purpose of restoring the duck club. Additional work to be done includes repairing the broken tide gate, discing the ponds, planting vegetation that provides food for ducks, and otherwise restoring the habitat for ducks. This work has not been done because BCDC and the Regional Water Quality Control Board, San Francisco Bay Region (the “Regional Board”) have asserted that the work cannot legally proceed.

10. The levee repairs were needed for the restoration of the duck club. The duck ponds are at elevations above high tide. They can be flooded (by pumping water to raise the water

elevations above high tide) only if the levees hold the water in. Cleanup and Abatement Order No. R2-2015-0038 (the “Order”) would prevent the duck club from being restored by requiring tidal circulation.

11. The Order would requires the provision of mitigation habitat, which would require expenditures of large amounts of money. Mitigation banks charge approximately \$100,000-200,000 per acre.

12. The Regional Board has not held a hearing on the Order.

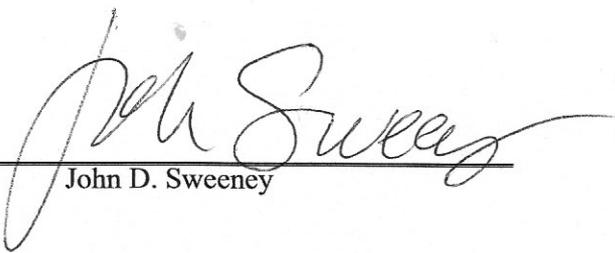
13. If the Club is required to proceed comply with the Order while it is being review by the State Water Resources Control Board, the Club will be substantially harmed. It would have to pay substantial amounts of money to obtain the mitigation demanded. Mitigation banks charge approximately \$100,000-200,000 per acre. The levee work cost hundreds of thousands of dollars. If it or any portion of it had to be removed, that would harm the club by depriving it of valuable property improvements. Additional costs in the hundreds of thousands of dollars would be incurred if substantial removal were required. The Club would also be harmed because the Constitutional rights of itself and its members are being violated by the requirements of the Order, which was issued without a hearing. The Club is also being harmed by being prohibited from using the island for a duck club, which is what is has historically been used for and which benefits the public and the environment. Requiring tidal flows at the island would harm the vegetation and habitat that has been created by the elevated water levels that have existed for more than a year now.

14. There would be no substantial harm to other persons or the public interest if a stay is granted. The duck club restoration activities have been placed on hold. The public interest would be promoted by a stay because the Order threatens all duck clubs in the Suisun Marsh, which must maintain their levees and internal ditches. Other than the improved ditches and water levels inside the levees, conditions at the island are generally unchanged from before the work at issue. The Club is not aware of any harm to any sensitive species resulting from work at issue.

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I swear under penalty of perjury under the laws of the State of California that the statements
in this declaration are true and correct.

DATED: October, 11, 2015



John D. Sweeney

CLUB #801

ANNIE MASON POINT CLUB

RECEIVED
NOV 15 1984

LAND USE SUMMARY

Managed wetland	30 ac.
Upland area	6 ac.
Tule berm	<u>15 ac.</u>
TOTAL	51 ac.

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

PRESENT CLUB CONDITIONS

WATER MANAGEMENT

Annie Mason Point Club is a small lone club located on Buckley Island. It is contained within a single levee surrounded by Grizzly Bay to the north and Suisun Cutoff to the south. Structure A on the east side of the club functions as the main flood gate and brings water into the club via a perimeter ditch system. A system of interior ditches running from south to north further distributes water to the pond. Structure B is used to drain the club into Grizzly Bay. Two small check dams (C and D) are located in the perimeter ditch. These structures aid in circulation by putting a head on the inlet water and forcing it to circulate across the club in a south to north direction. Removing the boards in the dam enables the ditch to drain.

VEGETATION

An on-club survey in 1976 found the club to be composed predominantly of olney and hardstem bulrush in the lower areas and saltgrass in the higher areas. The 1978 CA Dept. of Fish and Game aerial survey reported tule growth intermixed with the above vegetation. None of these plants has a relatively high use and selection value for waterfowl.

Olney and hardstem bulrush are both sod forming perennials which grow along sloughs and in ditches containing water most of the year. They will invade ponds which are shallowly flooded year round and are indicative of fairly fresh water conditions. Tules are also common in permanent ponds. Their increase was probably due to the club's lack of water control at the time.

SUMMARY

Prior to 1978, Annie Mason Point Club's vegetation largely consisted of non-waterfowl food plants. This was likely due to the club's lack of water control at the time. Since then, the situation has greatly improved and the club reports that it now has the water control structures and tight levees necessary for proper water management.

FLOOD/DRAIN EVALUATION

Due to limited access, an elevation survey was not done for this club. That being the case, the club's flood and drain capability could not be determined. However, using some assumptions, it is apparent that as the ponded area is very small, gates A and B would likely have to be only 24" in diameter to service this club effectively. Although structure B, the drain gate, must be set low enough to provide subsurface drainage of the pond.

CLUB IMPROVEMENTS

WATER MANAGEMENT

Needed Improvements: It is, first of all, necessary that the club follows a

regular program of water management; in this case the alkali bulrush program is recommended to promote such growth as well as fat hen and brass buttons. Considering the generally poorer quality water in Suisun Bay, effective spring leach cycles performed within 30 days are required to establish and maintain suitable habitat.

Proper water control necessitates inspection and maintenance of levees, ditches, and water control structures. Ditches need to be kept clear of vegetation blockages or silt build-ups to allow circulation and drainage. For effective drainage, ditches should be at least 2.5 ft. deeper than the average pond bottom elevation at the controlling tide gate, sloping to 1.5 ft. deep at the most remote point in the pond. Water control structures should also be kept in working order. Levees require frequent inspection and attention to prevent major breaks from occurring. See the enclosed list of standard recommendations for more information on the maintenance and repair of water control facilities.

VEGETATION MANAGEMENT

Needed Improvements: The dense growth of undesirable vegetation in the pond needs to be reduced by burning and/or discing followed by flooding according to the water management schedule. Removing the old vegetation and turning over the soil provides a seed bed for the establishment of new vegetation which is more preferred by waterfowl.

Emergent pond vegetation should be mowed to create open pond areas which are attractive to over-wintering waterfowl in the Suisun Marsh. The extent and pattern of mowing is left to the desires of the club. Close-cutting of tules and olney bulrush prior to fall flooding is an effective method of setting back their growth.

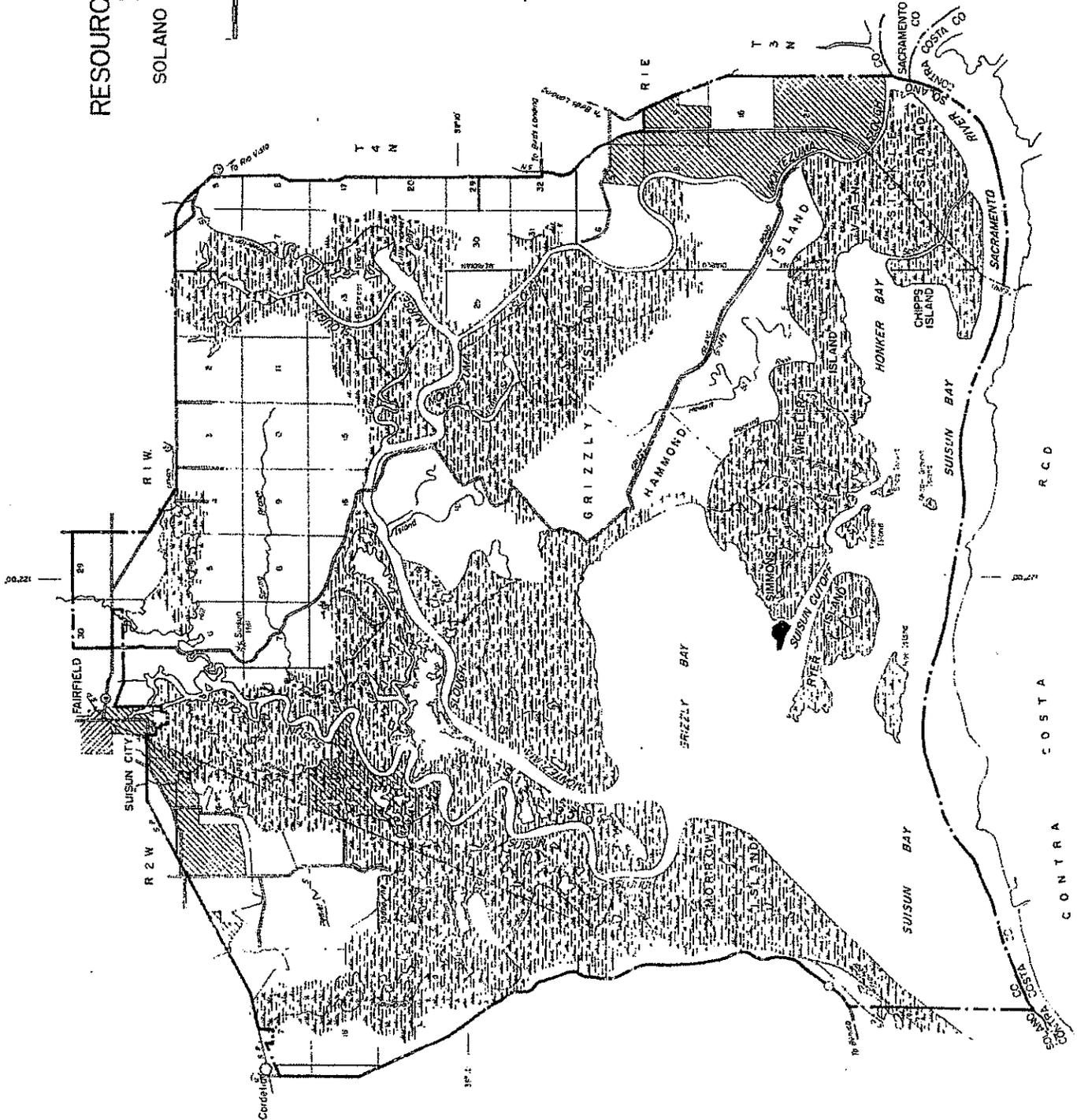
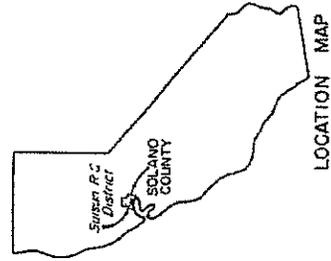
Levee vegetation should be mowed, as necessary, to facilitate access for maintenance reasons. This should be done after June 1st to lessen disruption of pheasant and waterfowl nesting.

SUISUN
 RESOURCE CONSERVATION
 DISTRICT
 SOLANO COUNTY, CALIFORNIA
 OCTOBER 1979

SCALE 1:135,000
 0 1 2 MILES



LEGEND
 [Hatched box symbol] Exc. 2680 A-60
 [Dashed line symbol] District Boundary



Source:
 Base map prepared by SCS, WISC Corro Unit from USGS 1:24,000 quads.
 U.S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE

SOIL and CAPABILITY MAP SUMMARY

Date: _____

Effective Depth	Soil Profile			Average Slope in %	Erosion Status	Suitable Land Uses or Crops	Limiting Factors or Remarks
	Texture		A.W.C.* Inches				
	Surface	Subsoil					
+60"	clayey muck	clayey muck	14-15"	0-1%	slight	1) Wildlife, wetland habitat. 2) Recreation.	1) Rooting depth restricted by high water table. 2) Requires drainage and leaching of soil salts for proper management. 3) Levees and tidegates are necessary for water control. 4) Only salt tolerant vegetation should be managed for.
-----	variable		1-2"	0-1%	NONE	1) Wildlife wetland habitat.	1) Strongly saline land type. 2) Mud flats, subject to tidal inundation.

Available Water Capacity _____

SCS CONS-15
OCTOBER 1974

SOIL MAP

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Owner Taylor, James F. Operator CA
County SoLano State CA
Soil survey sheet(s) or code nos. Approximate scale 1"=660'
Prepared by U.S. Department of Agriculture, Soil Conservation Service cooperating
with Suisun Resource Conservation District



CONSERVATION PLAN MAP

Prepared by SOIL CONSERVATION SERVICE * UNITED STATES DEPARTMENT of AGRICULTURE
cooperating with



OWNER
OPERATOR

FARM No. _____
SCALE _____ ACRES _____
PHOTO No. _____



36 Ac. - Inside Levee

14 Ac. - Outside Levee

Wildlife Wetland Habitat

SCS-CONS-16
OCTOBER 1974

CONSERVATION PLAN MAP

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Owner Taylor, James F. Operator _____
County Solano State CA Date _____
Approximate acres 51.51 Approximate scale 1"=660'
Cooperating with _____ Suisun Resource _____ Conservation District _____
Plan identification 801 Photo number _____
Assisted by _____ USDA Soil Conservation Service



RECOMMENDED MANAGEMENT FOR ALKALI BULRUSH

Alkali Bulrush has been found to have the highest overall use and selection values of the 35 food species records (Mall, 1969) in the Suisun Marsh.

The following Water Management Schedule has been developed to produce dominant stands of alkali bulrush and subdominant stands of other important waterfowl food plants such as fat-hen and brass buttons. This management practice somewhat retards the growth of other less desirable plants such as tules, cattails, pickleweed, and saltgrass. To establish stands of alkali bulrush from seed in areas where it does not presently exist, the procedures set forth in the Department of Fish and Game bulletin entitled "Propagating Alkali Bulrush" should be followed.

It is important to remember that the plant composition of the Suisun Marsh is related more to water management than any other single factor (Mall, 1969). The length of soil submergence and levels of salinity in the soil are factors which can be managed to maximize the production of waterfowl food plants. The schedule as presented here, is meant to be used as a guide to maintain optimum conditions for the production of alkali bulrush seed. For a more complete and detailed discussion of the Water Management Schedule, see the California Department of Fish and Game publication "Waterfowl Habitat Management in the Suisun Marsh".

NOTICE:

The SCMAD has participated in the preparation of this management plan and endorses this Water Management Schedule to minimize the production of mosquitoes. This plan is suitable for use on private duck club land and all other lands owned by public agencies managed as waterfowl habitat, and in normal weather cycles will limit the production of mosquitoes if water levels are managed properly. However, if adverse variations in water levels occur, SCMAD may take action to abate any production of mosquitoes pursuant to the procedures set forth in the California Health and Safety Code Sections 2274 et seq. at the property owners expense whenever larvae and adult mosquitoes are found to be present in sufficient densities to warrant control procedures.

HUNTING SEASON

- September Begin filling ditches in September only if water can be circulated in the ditches without flowing into the ponds. The ditches must have a minimum width (18") and depth (24") to allow adequate circulation of the water. Do not flood any pond surface.
- October Flood the ponds as rapidly as possible to the desired shooting depth of 8-12 inches. Maintain this water level for the duration of the duck hunting season. Circulate water through the ponds with inlet and outlet gates set to allow maximum flow through all ponds during the season. The Solano County Mosquito Abatement District usually authorizes the flooding of ponds three weeks prior to the opening of the waterfowl season. Landowners will be notified each year of the exact date.
- Nov-Dec Continue to circulate.

LEACHING CYCLES

- January Begin draining ponds at or before the end of the hunting season. Continue to drain the ponds until the water level in the ditches is 12" below the pond bottoms. This should be accomplished within 20 days. If this level is reached in less than 20 days, begin to reflood immediately.
- February The first drain should be completed by early February depending on rainfall and delta outflow conditions.
- Flood: Flood the fields and ponds to shooting depth, (approximately 8-12"). This should be accomplished within 10 days. Many clubs can flood much faster than this. If shooting level is reached sooner than 10 days, begin to drain immediately. If there is a problem lowering the water to a level 12" below the pond bottoms within 20 days, use any days saved during the flooding period to increase the length of the drain period. Flooding and draining should be accomplished within 30 days.
- Drain: Repeat the drain as before making sure that the water level in the ditches has been drawn down 12" below the pond bottoms.
- March-April Repeat Flood-Drain Cycle. Flood to 1/2 shooting level (approx. 4-6"). This cycle must be completed as quickly as possible. For mosquito prevention, it is important that the pond bottom not be allowed to dry out prior to reflooding for the set-set cycle. Ideally this drain cycle should be completed and ponds reflooded and water levels stabilized and circulating prior to April 1. If significant number of mosquitoes are produced on clubs draining and flooding during April, aerial spraying by Solano County Mosquito Abatement District may be necessary at the expense of the club.

SEED-SET CYCLE

April-June

As soon as 2 leaching cycles have been completed, flood to 1/2 shooting level (approx. 4-6"). Stabilize at this level and continue circulating until summer drainage. Be sure to maintain a constant water level in the ponds for the entire cycle. It has been shown that in order to achieve a good seed-set bulrush stands must be flooded during this period. As soon as bulrush has seed-set or not later than June 1, begin final drainage.

MAINTENANCE

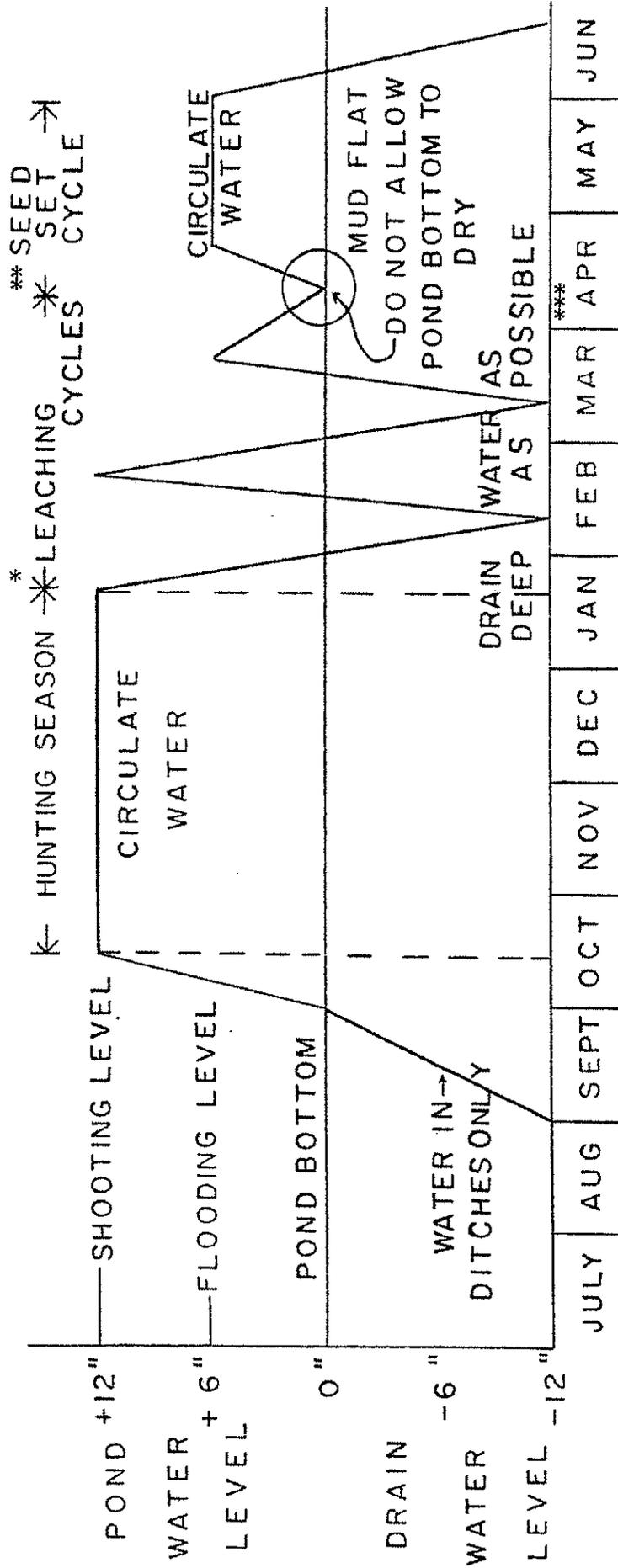
Summer

The summer drying period will retard the invasion of undesirable plants and will allow necessary maintenance and field work.

September

Mow to create open water areas. For a discussion of mowing techniques, see the Department of Fish and Game Bulletin: "Waterfowl Habitat Management in the Suisun Marsh".

ALKALI BULRUSH WATER MANAGEMENT SCHEDULE



* The leaching cycles are calculated using a 10 day flood and 20 day drain period, however, many clubs can accomplish one total flood and drain cycle in less than 30 days. The flushing cycles should be completed as fast as possible, however, do not cut short the 20 day drain period unless the water level in the ditches 1' below pond bottom.

** Ideally, stabilized water levels of the seed set cycle should be accomplished before April 1.

*** Any duck club planning to fluctuate pond water levels in April must notify the Solano County Mosquito Abatement District of their intentions. April is the beginning of the mosquito breeding season. Extra care is essential to insure that the pond bottoms are not allowed to dry out during April prior to reflooding for the seed-set cycle.

RECOMMENDED MANAGEMENT FOR FAT HEN

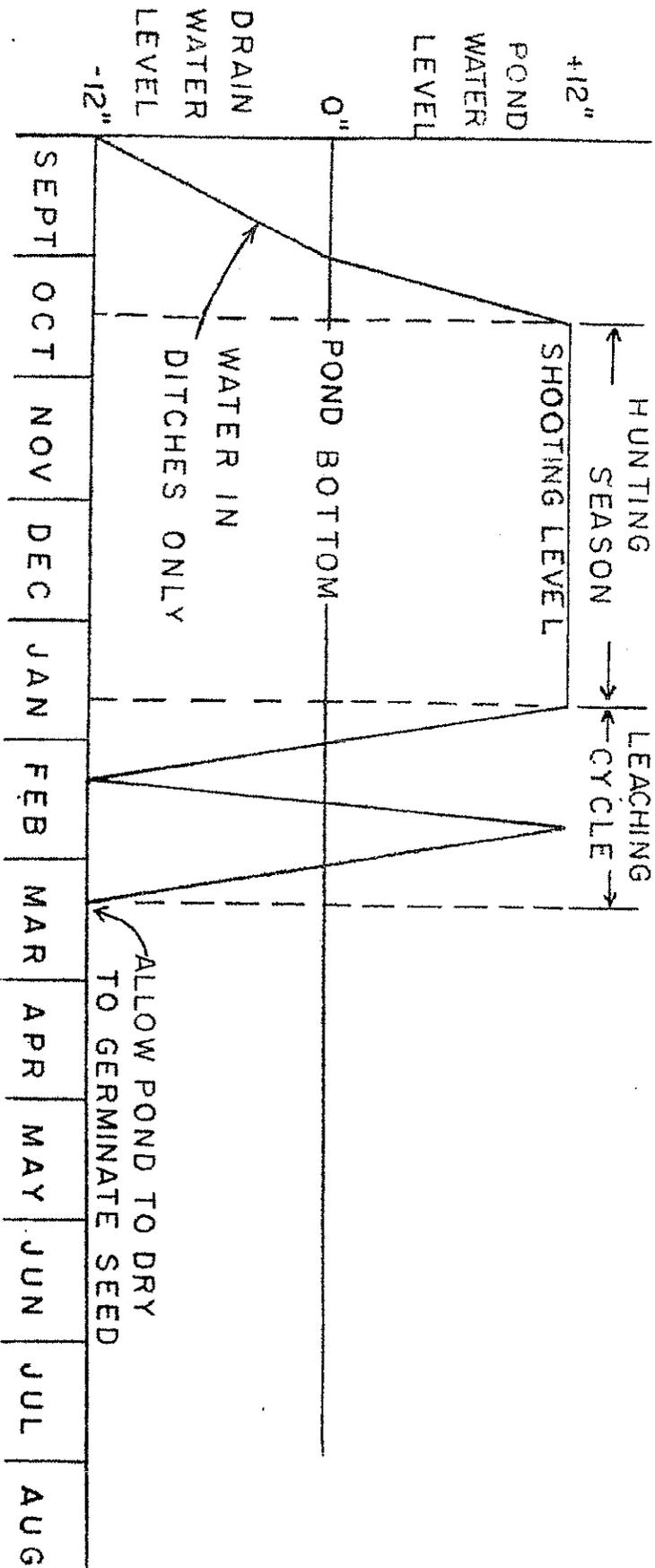
Fat hen is an annual herb that is a prolific seed producer and preferred waterfowl food plant. It grows best during the spring and summer on disturbed soils. Fat hen does not compete well with perennials and will require discing every 4-5 years in order to maintain a dominant stand. Fat hen is recommended on clubs that are relatively level, that have firm, well-drained soils and that have a manager to insure efficient Water Management. The following Water Management Schedule has been developed to produce a dominant stand of fat hen, while suppressing less desirable plants such as tules, cattails and saltgrass. This schedule may support additional stands of brass buttons. Plant composition in the Suisun Marsh is related more to Water Management than any other single factor (Mall, 1969). The length of the soil submergence and salinity are factors which can be managed to maximize the production of waterfowl food plants.

The schedule as presented here, is meant to be used as a guide to maintain optimum conditions for the production of fat hen seed. For a more complete and detailed discussion of the Water Management Schedule, see the Department of Fish and Game Publication "Waterfowl Habitat Management in the Suisun Marsh".

NOTICE:

The SCMD has participated in the preparation of this management plan and endorses this Water Management Schedule to minimize the production of mosquitoes. This plan is suitable for use on private duck club land and all other lands owned by public agencies managed as waterfowl habitat, and in normal weather cycles will limit the production of mosquitoes if water levels are managed properly. However, if adverse variations in water levels occur, SCMD may take action to abate any production of mosquitoes pursuant to the procedures set forth in the California Health and Safety Code Sections 2274 et seq. at the property owners expense whenever larvae and adult mosquitoes are found to be present in sufficient densities to warrant control procedures.

FAT HEN WATER MANAGEMENT SCHEDULE



WETLANDS MAINTENANCE MANAGEMENT REPORT
SUISUN RESOURCE CONSERVATION DISTRICT

Date: 1-29-90

Club Name: ANNIE MASON Pt.

Acres in

Owner or

Manager JIM TAYLOR

Ownership 51.5

Phone: (415) 758-209

Ownership No. 801

*NOTE: YOU MUST SUBMIT A MAP OF YOUR PROPERTY SHOWING WORK LOCATIONS. SUITABLE MAPS ARE AVAILABLE FROM ASSESSOR'S OFFICE.

Type of Work	# of Units	Size or Acreage	Cubic Yards	Linear Feet	Work Schedule		Comments
					Start	Complete	
Clearing Ditches	XXXXX	XXXXXX	1000	Approx. 1200	As soon as possible	Oct. 1	1) Upon Existing Levee 1)
Construct New Ditches	XXXXX						
Interior Levee Repair	XXXXXX	XXXXXXX	2000	500'	"	"	2) From Existing Ditch
Exterior Levee Repair	XXXXXX	XXXXXXX	2000	750'	"	"	2) Suisun Cut + ANNIE M Suisun Bay
Road Maintenance	XXXXXX	XXXXXXX					2)
Grading Pond Bottoms	XXXXXX						
New Culverts			XXXXXX	XXXXXXX			
Repair-Replace Culverts			XXXXXX	XXXXXXX			
Water Control Structures			XXXXXX	XXXXXXX			3)
Install New Blinds		XXXXXXX	XXXXXX	XXXXXXX			
Relocate Blinds		XXXXXXX	XXXXXX	XXXXXXX			
Other Work (Specify)							

1) State where material will be placed 2) State source of material 3) State type of structure



GRIZZLY BAY

WATER
PUMP

SIMMONS
ISLAND

WATER
PUMP

MASON
SLOUGH

Interior
Levee Repair

BUCKLER PT
51.5 ACRES

Interior
Levee Repair

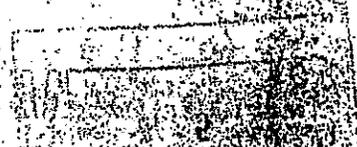
Interior
Levee Repair

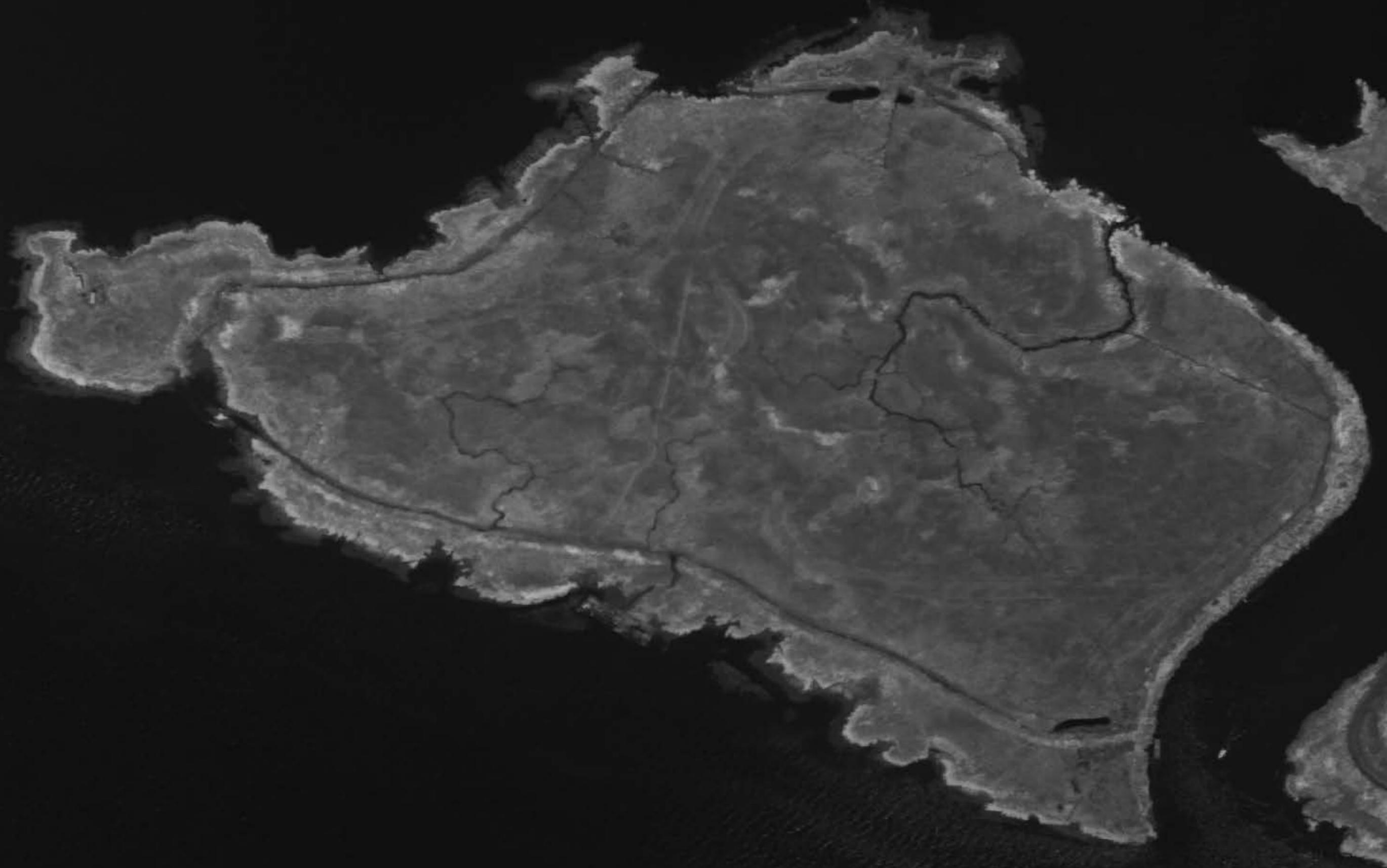
Interior
Levee
Repairs

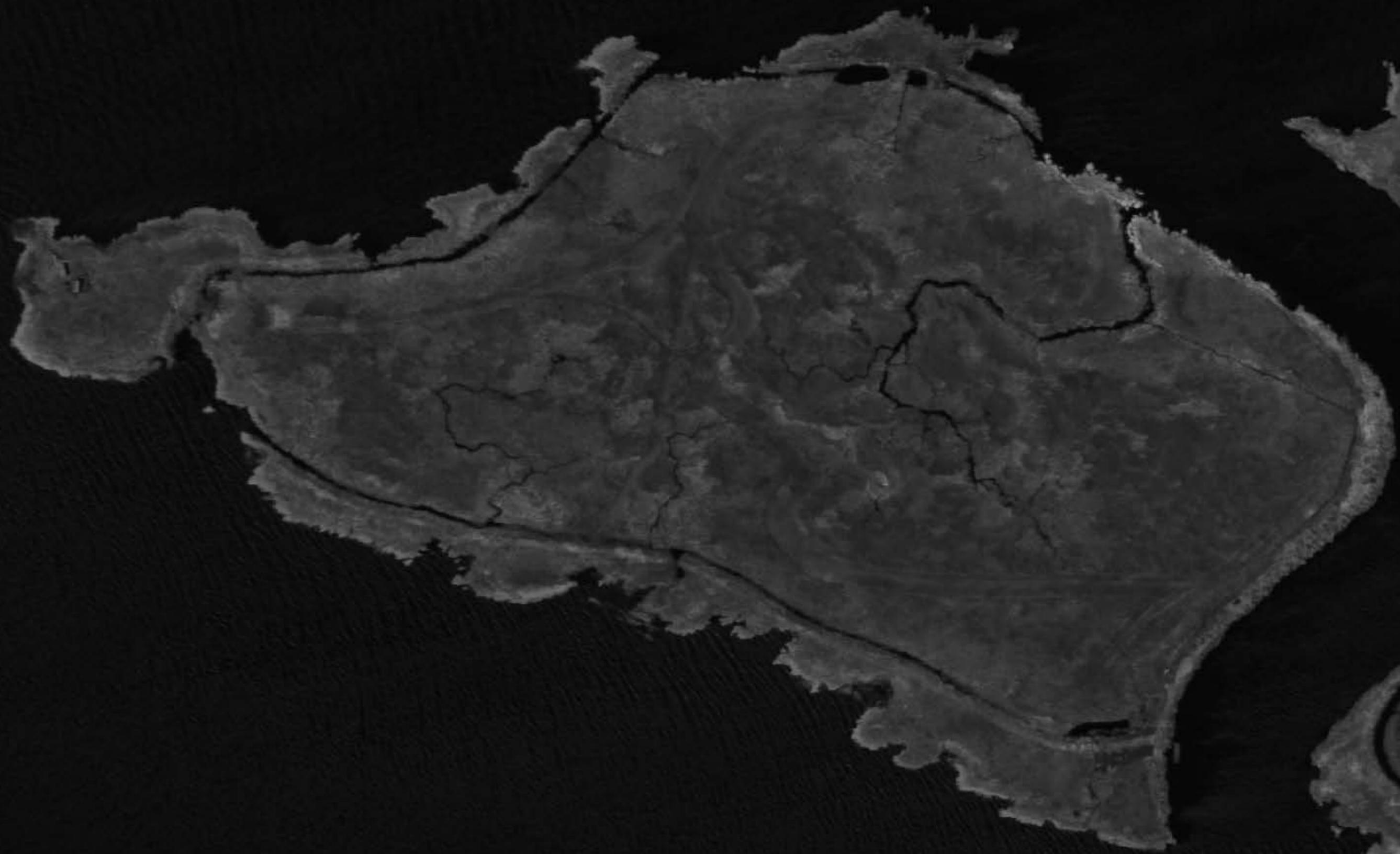
EXTERIOR
Levee Repair

EXTERIOR Levee
Repair

SUISUN CUT OFF







1 JOHN BRISCOE (053223)
LAWRENCE S. BAZEL (114641)
2 PETER PROWS (257819)
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5 jbriscoe@briscoelaw.net
lbazel@briscoelaw.net
6 pprows@briscoelaw.net

7 *Attorneys for Petitioner Point Buckler Club, LLC*

8
9 STATE OF CALIFORNIA

10 STATE WATER RESOURCES CONTROL BOARD

11 In the matter of:

12 CLEANUP AND ABATEMENT ORDER
13 NO. R2-2015-0038;
POINT BUCKLER CLUB, LLC

No.

AMENDED DECLARATION OF
LAWRENCE S. BAZEL

14
15
16 I, Lawrence S. Bazel, declare as follows:

17
18 1. I am a lawyer licensed to practice in the State of California and counsel for petitioner
19 Point Buckler Club, LLC (“Petitioner”). I have personal knowledge of the facts in this declaration,
20 and if called as a witness could competently testify to them.

21 2. Attached as Exhibit 1 to this declaration is an accurate copy of Cleanup and
22 Abatement Order No. R2-2015-0038 (the “Order”) issued by the San Francisco Bay Regional Water
23 Quality Control Board (the “Regional Board”).

24 3. Attached as Exhibit 2 to this declaration is an accurate copy of a 1984 aerial
25 photograph of Point Buckler that I am informed and believe was obtained from military sources at
26 the request of Petitioner.

27 4. Attached as Exhibit 3 to this declaration is an accurate copy of an agreement dated
28 2005.

1 5. Attached as Exhibit 4 to this declaration is an aerial photograph of Point Buckler
2 dated April 2013, as obtained from Google Earth.

3 6. Attached as Exhibit 5 to this declaration is an aerial photograph of Point Buckler
4 dated April 2015, as obtained from Google Earth.

5 7. Attached as Exhibit 6 to this declaration is an accurate copy of a recent decision of
6 the Sacramento Superior Court.

7 8. Attached as Exhibit 7 to this declaration is an accurate copy of a portion of a plan of
8 protection.

9 9. Attached as Exhibit 8 to this declaration is an accurate copy of the federal Water
10 Quality Act of 1965.

11 10. Attached as Exhibit 9 to this declaration is an accurate copy of the current list of
12 owners of clubs, as obtained from the Suisun Resource Conservation District (“SRCD”) website.

13 11. Attached as Exhibit 10 to this declaration is an accurate copy of a document produced
14 by the San Francisco Bay Conservation and Development Commission “BCDC”) in response to a
15 Public Records Act request.

16 12. Attached as Exhibit 11 to this declaration is an accurate copy of a document that I am
17 informed and believe was produced to Petitioner by SRCD.

18 13. I have reviewed documents produced by BCDC in response to a Public Records Act
19 request and have found no amendment or modification of the individual management plan for
20 Annie Mason Point Club (or Point Buckler or any other name used for the island). Nor have I found
21 any permit authorizing abandonment of the managed wetlands at the island.

22 14. Attached as Exhibit 12 to this declaration is an aerial photograph of Point Buckler
23 dated September 2008, as obtained from Google Earth.

24 15. There has been no hearing held on the Order, either pre-deprivation or post-
25 deprivation.

26 16. Attached as Exhibit 13 to this declaration is an accurate copy of a letter I sent Bruce
27 Wolfe. In that letter I requested a hearing on the Order. In my review of documents associated with
28 this case, I noted that a hearing on the Order had previously been requested.



EDLUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

Sent via certified mail and electronic mail

September 11, 2015
CIWQS Place ID 816826

Point Buckler LLC/John Sweeney
c/o Miller Starr Regalia
1331 N. California Blvd., 5th Floor
Walnut Creek, California 94596
Attn: Wilson Wendt, wilson.wendt@msrlegal.com

Cert. Mail #7014 2870 0001 4626 3182

Subject: Cleanup and Abatement Order No. R2-2015-0038 for Unauthorized Levee Construction Activities at Point Buckler Island in the Suisun Marsh, Solano County

Dear Mr. Sweeney:

Enclosed with this letter is Cleanup and Abatement Order No. R2-2015-0038 (Order) for unauthorized levee construction activities at Point Buckler Island located in the Suisun Marsh, Solano County.

As described in finding 14 of the Order, the Regional Water Board is entitled to recover reasonable costs actually incurred by staff from responsible parties to oversee cleanup of unauthorized activities and/or discharges that have adversely impacted or threaten to affect waters of the State. To assure that sufficient Regional Water Board staff resources are available to conduct the necessary reviews and approvals, we intend to include this site in this Region's Site Cleanup Program (SCP) Cost Recovery Program, more fully described in the attached Reimbursement Process for Regulatory Oversight enclosure. Pursuant to provision 8 of the Order, you are required to acknowledge in writing your intent to reimburse the State for cleanup oversight work by returning the Acknowledgment Letter (Attachment 3), or its equivalent, within 14 days of the date of the Order.

Estimate of Work to be Performed and Expected Outcome

Regional Water Board staff will be actively overseeing the investigation and cleanup of this site. Given this, Regional Water Board staff estimate that the following work will be performed for the subject site during State fiscal year 2015 - 2016, ending June 30, 2016: 1) Review work plans; investigation reports; corrective action plans; and associated correspondence from the discharger, its consultant, and/or interested parties; 2) Conduct site inspections following up on the technical reports and Order compliance; 3) Conduct meetings regarding the site on issues relevant to corrective

DR. TERRY P. YOUNG, CHAIR | BRUCE M. WATTE, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

actions; and 4) Discuss issues related to the site and prepare written correspondence between the Regional Water Board and interested parties.

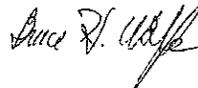
Billing Rates

Attachment 1 provides a detailed description of the billing procedure. Attachment 2 lists the billing rates for employees expected to engage in the work or services for your site/facility. We estimate that 100 hours will be required in the oversight of the site for the remainder of the State's fiscal year, which ends June 30, 2016. This is merely an estimate. The actual time needed will depend on the nature and extent of the necessary oversight. The name and classification of employees making charges will be listed on invoices. The average billing rate is approximately \$150 per hour. An estimate for any necessary work after June 30, 2016, will be provided in late spring 2016.

Contact Information

If you have any questions, please contact Agnes Farres of my staff at (510) 622-2401 or by e-mail to agnes.farres@waterboards.ca.gov.

Sincerely,



Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe,
o=SWRCB, ou=Region 2,
email=bwolfe@waterboards.ca.gov, c=US
Date: 2015.09.11 14:29:05 -07'00'

Bruce H. Wolfe
Executive Officer

Enclosures: Cleanup and Abatement Order No. R2-2015-0038
Attachment 1 – Reimbursement Process for Regulatory Oversight
Attachment 2 – Billing Rates
Attachment 3 – Acknowledgement Letter

Copy by email:

John Sweeney, john@spinnerisland.com
U.S. Environmental Protection Agency
Bill Lee, lee.bill@epa.gov
Corps, SF Regulatory Branch
Katerina Galacatos, Katerina.Galacatos@usace.army.mil
Jane Hicks, jane.m.hicks@usace.army.mil
California Department of Fish and Wildlife
Jim Starr, Jim.Starr@wildlife.ca.gov
San Francisco Bay Conservation and Development Commission
Maggie Weber, maggie.weber@bcdca.gov

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. R2-2015-0038

POINT BUCKLER LLC
SOLANO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Regional Water Board), finds that:

1. Point Buckler LLC (Discharger) owns approximately 51 acres of land at Point Buckler Island located off the western tip of Simmons Island in the Suisun Marsh, Solano County (Site). The Site was historically managed for ducks, but, over a period of decades without management, tidal circulation was naturally restored to the Site's several tidal marshes.
2. The Discharger constructed a levee at the Site without proper authorizations, certifications, and/or permits from the Regional Water Board. The Discharger's levee construction activities included construction of a levee around the perimeter of the Site resulting in the diking off of the tidal channels located on the northeast, northwest, and southwest portions of the Site. Based upon photographic evidence and reports from Bay Conservation Development Commission (BCDC) and California Department of Fish and Wildlife (CDFW) staff, the Discharger has adversely impacted tidal marsh vegetation.
3. The Site's adversely impacted tidal marshlands constitute waters of the State and United States.
4. The Regional Water Board's Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) defines the existing and potential beneficial uses for waters within the Region. The beneficial uses of any specifically identified water body generally apply to all its tributaries. The Basin Plan designates the following existing and potential beneficial uses for Suisun Bay: industrial service supply, industrial process supply, commercial and sport fishing, estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, wildlife habitat, contact and noncontact water recreation, and navigation.
5. Beneficial uses present at the Site that were adversely impacted by the Discharger's unauthorized levee construction activities include estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, and wildlife habitat.
6. The Site is potential habitat for special status species including Chinook Salmon, Delta Smelt, California Clapper Rail, and Salt Marsh Harvest Mouse. The adverse impacts from levee construction activities may include impacts that resulted because some of the work was conducted outside appropriate work windows for these protected species.
7. Suisun Marsh is identified as an impaired water body pursuant to federal Clean Water Act (CWA) section 303(d) for mercury, nutrients, organic enrichment/low dissolved

oxygen, and salinity/total dissolved solids/chlorides. The circulation of waters through tidal marsh generally provides improved dissolved oxygen conditions and maintains water chemistry balance, such as the proper range of salinity. Cutting off tidal circulation to the Site's tidal marshes has disrupted the marshes' ability to provide this natural water quality benefit.

8. On November 19, 2014, BCDC and CDFW staff inspected the Site and reported that the Discharger's unauthorized levee construction activities cut off crucial tidal flow to the interior of the Site, thereby drying out the Site's former tidal marsh areas and destroying existing and potential habitat for special status species including Chinook Salmon, Delta Smelt, California Clapper Rail, and Salt Marsh Harvest Mouse.
9. The Discharger's unauthorized levee construction activities at the Site have unreasonably affected or threaten to adversely affect water quality and beneficial uses by filling the tidal drainage channels at the Site, thereby cutting off tidal circulation to the Site's interior tidal marsh habitat and destroying existing and potential habitat for special status species including Chinook Salmon, Delta Smelt, California Clapper Rail, and Salt Marsh Harvest Mouse.
10. The Discharger's unauthorized levee construction activities at the Site are in violation of California Water Code (CWC) sections 13260 and 13264, CWA sections 401 and 402, and the Basin Plan as described below:
 - a. CWC section 13260 requires that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State, shall file with the appropriate Regional Water Board a Report of Waste Discharge (ROWD). CWC section 13264 further provides that no person shall initiate any new discharge of waste, or make any material changes in any discharge, prior to the filing of the ROWD required by CWC section 13260. The Discharger has not filed a ROWD with the Regional Water Board for the levee construction activities at the Site described above, which could adversely affect the quality of waters of the State. Accordingly, the Discharger is in violation of CWC sections 13260 and 13264.
 - b. CWA section 401 specifies that any applicant required to obtain a federal license or permit to conduct any activity that may result in a discharge into navigable waters must obtain a certification from the state in which the discharge originates. Title 23 of the California Code of Regulations, section 3855, requires that "an application for water quality certification shall be filed with the regional board executive officer." The Discharger has not filed an application for a CWA section 401 Water Quality Certification for the levee construction activities that resulted in a discharge of fill to waters of the State and United States. Accordingly, the Discharger is in violation of CWA section 401.
 - c. CWA section 402 established a National Pollutant Discharge Elimination System (NPDES) permit program and specifies that a NPDES permit is required for any stormwater discharges associated with construction activity, including clearing,

- grading, and excavation resulting in land disturbance of one acre or more. The Discharger has not filed a Notice of Intent to enroll for coverage under the State's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ) for the levee construction and other land disturbance activities conducted at the Site. The levee construction and other land disturbance activities conducted by the Discharger at the Site have collectively disturbed greater than one acre of land. Accordingly, the Discharger is in violation of CWA section 402.
- d. Chapter 4, Table 4-1 of the Basin Plan prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses. The Discharger's unauthorized levee construction activities have resulted in the discharge of earthen fill into the site's tidal channels and around the perimeter of the Site in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses. Additionally, cutting off tidal circulation into the Site's interior tidal marshes has unreasonably affected or threatened to affect water quality and beneficial uses. Accordingly, the Discharger's levee construction activities at the Site are in violation of the Basin Plan.
11. CWC section 13304 requires any person who has discharged or discharges waste into waters of the State in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the State Water Resources Control Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.
12. Based on the above findings, the Regional Water Board finds that the Discharger has caused or permitted waste to be discharged or deposited where it has been discharged into waters of the State and created or threatens to create a condition of pollution. As such, pursuant to CWC sections 13267 and 13304, this Order requires the Discharger to submit technical reports to enable the Regional Water Board to understand the extent, scope, and character of the discharge and its impacts and requires the Discharger to undertake corrective action to clean up the waste discharged and abate its effects.
13. This Order is an action to enforce the laws and regulations administered by the Regional Water Board. As such, this action is categorically exempt from the California Environmental Quality Act, pursuant to section 15321(a)(2) of Title 14 of the California Code of Regulations.

14. Pursuant to CWC section 13304, the Discharger is hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effect thereof, or other remedial action, required by this Order.

IT IS HEREBY ORDERED, pursuant to CWC sections 13267 and 13304, that the Discharger shall submit the required technical reports and clean up the waste discharged, abate its effects, and take other remedial actions as follows:

A. Prohibitions

1. The discharge of fill material that will degrade, or threaten to degrade, water quality, or adversely affect, or threaten to adversely affect existing or potential beneficial uses of waters of the State is prohibited.
2. Removal of tidal marsh vegetation in a manner that adversely impacts or threatens to adversely impact water quality or beneficial uses in any water of the State is prohibited.
3. This Order does not allow for the take, or incidental take, of any special status species. The Discharger shall use the appropriate protocols, as approved by CDFW and the U.S. Fish and Wildlife Service, to ensure that activities do not impact the Beneficial Use of the Preservation of Rare and Endangered Species or violate the California or federal Endangered Species Acts.

B. Provisions

1. **No later than October 16, 2015, the Discharger shall submit, acceptable to the Regional Water Board Executive Officer, the following:**
 - a. A technical report providing a description of all levee construction activities, boat dock construction, and any other discharges of fill material or structures into waters of the State. The technical report shall also describe all grading and vegetation removal activities the Discharger has conducted at the Site. This technical report shall describe the nature and extent of these activities by means such as, but not limited to, providing a map illustrating the extent of these activities, and calculations quantifying the amount of fill material placed into waters of the State, the acreage of all channel, marsh, or other wetland vegetation removed or otherwise adversely impacted at the Site, and the linear distance (in feet) of tidal channels impacted by the levee construction activities. The impact assessment shall be performed by a qualified professional with expertise in tidal marsh habitat and shall, at a minimum, include a description of the pre-disturbance tidal channel morphology, soil conditions, hydrology, and characterization of the tidal marsh habitat impacts and loss, as well as documentation (e.g., aerial photographs, photographs, reports, topographic maps or drawings) showing the condition of the Site prior to the recent levee construction activities. The results of this impact assessment shall serve as the basis for the Corrective Action Workplan described below.

- b. Description of any permits and other authorizations obtained from local, State, and federal agencies and local or regional districts for any filling, grading, vegetation removal, levee and structure construction activities, or other activities that have disturbed land or water features at the Site since the Discharger acquired it.
- 2. No later than November 1, 2015, the Discharger shall submit a Corrective Action Workplan, acceptable to the Regional Water Board Executive Officer, that includes the following:**
- a. A workplan proposal for corrective actions designed to: (a) restore tidal circulation to all of the tidal channels and interior marsh habitat that existed prior to the Discharger's levee construction activities; and (b) provide compensatory mitigation habitat to compensate for any temporal and permanent impacts to the functions and values provided by the impacted wetlands, tidal marshlands, and drainage channels impacted by the Discharger's levee construction, vegetation removal, and other Site development activities. This Corrective Action Workplan shall include success criteria and performance standards for assessing whether the corrective actions are achieving the intended water quality and habitat restoration goals, including identification and justification for the proposed targeted native plant species, soil and hydrologic conditions, and identification and description of any reference sites utilized. Performance standards shall designate the final habitat success criteria. The Corrective Action Workplan shall include an implementation time schedule acceptable to the Executive Officer.
 - b. A corrective action self-monitoring program workplan proposal, designed to monitor and evaluate the success of the implemented corrected actions. The corrective action self-monitoring program shall monitor the success of the corrective actions until the approved habitat restoration activities have been successfully achieved, but not for a period of less than five years following completion of the corrective actions and not for a period of less than three years after any irrigation of revegetation plantings has ceased.

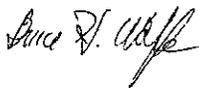
Within sixty days of approval of the Corrective Action Workplan by the Executive Officer, the Discharger shall initiate implementation of the Corrective Action Workplan in accordance with the approved implementation time schedule.

3. No later than January 31 of each year following initiation of the corrective actions and continuing until the corrective actions are successfully achieved, the Discharger shall submit annual self-monitoring program reports, acceptable to the Executive Officer, describing the progress reached toward achieving the restoration activities' approved success criteria and performance standards.
4. The Discharger shall submit with the final self-monitoring report a Notice of Completion, acceptable to the Executive Officer, demonstrating that the Corrective Action Workplan, as approved, has been successfully completed.
5. If the Discharger is delayed, interrupted, or prevented from meeting the work completion or report submittal deadlines specified in this Order, the Discharger shall

promptly notify the Executive Officer in writing with recommended revised completion or report submittal deadlines. Any extensions of the time deadlines specified in this Order must be approved in writing by the Executive Officer. The Executive Officer may consider revisions to this Order.

6. Regional Water Board staff shall be permitted reasonable access to the Site as necessary to oversee compliance with this Order.
7. The technical reports and workplan proposals required under provisions 1, 2, 3, and 4 above shall be complete, accurate, and adequate, as determined by the Executive Officer.
8. No later than 14 days from the date of this Order, the Discharger is required to acknowledge in writing its intent to reimburse the State for cleanup oversight work as described in the Reimbursement Process for Regulatory Oversight fact sheet provided to the Discharger with this Order, by filling out and returning the Acknowledgement of Receipt of Oversight Cost Reimbursement Account Letter or its equivalent, also provided with this Order.
9. As described in finding 14 above, upon receipt of a billing statement for costs incurred pursuant to CWC section 13304, the Discharger shall reimburse the Regional Water Board.
10. None of the obligations imposed by this Order on the Discharger are intended to constitute a debt, damage claim, penalty, or other civil action that should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare, and environment.

Failure to comply with the provisions of this Order may result in the imposition of civil liabilities, imposed either administratively by the Regional Water Board or judicially by the Superior Court in accordance with CWC sections 13268, 13304, 13308, 13350 and/or 13385, and/or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. Failure to submit, late or inadequate submittal of technical reports and workplan proposals, or falsifying information therein, is a misdemeanor and may subject the Discharger to additional civil liabilities. This Order does not preclude or otherwise limit in any way the Regional Water Board's ability to take appropriate enforcement action for the Discharger's violations of applicable laws, including, but not limited to, discharging without a permit and failing to comply with applicable requirements.



Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe, o=SWRCB,
ou=Region 2,
email=bwolfe@waterboards.ca.gov, c=US
Date: 2015.09.11 14:32:03 -07'00'

Bruce H. Wolfe
Executive Officer

Date

ATTACHMENT 1

REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT

We have identified your facility or property as requiring regulatory cleanup oversight. Pursuant to the Porter-Cologne Water Quality Control Act, reasonable costs for such oversight can be recovered by the Regional Water Quality Control Board (Regional Water Board) from the responsible party. The purpose of this enclosure is to explain the oversight billing process structure.

Introduction

The Porter-Cologne Water Quality Control Act authorizes the State Water Resources Control Board (State Water Board) to set up Cost Recovery Programs. The Budget Act of 1993 authorized the State Water Board to establish a Cost Recovery Program for the Site Cleanup Program (SCP). The program is set up so that reasonable expenses incurred by the State Water Board and Regional Water Boards in overseeing cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely impacting the State's waters can be reimbursed by the responsible party. Reasonable expenses will be billed to responsible parties and collected by the Fee Coordinator at the State Water Board in the Division of Financial Assistance.

The Billing System

Each cost recovery account has a unique charge number assigned to it. Whenever any oversight work is done, the hours worked are charged to the account number on the employee's time sheet. The cost of the hours worked is calculated by the State Accounting System based on the employee's salary and benefit rate and the State Water Board overhead rate.

State Water Board and Regional Water Board administrative charges for work such as accounting, billing preparation, general program meetings and program specific training cannot be charged directly to an account. This work will be charged to administrative accounting codes. The Accounting Office totals these administrative charges for the billing period and distributes them back to all of the accounts based on the number of hours charged to each account during that billing period. These charges show as State Water Board Program Administrative Charges and Regional Water Board Program Administrative Charges on the Invoice.

The Overhead Charges are based on the number of labor hours charged to the account. The overhead charges consist of rent, utilities, travel, supplies, training, and personnel services. If there is no labor charged to the account during the billing period, there will be no overhead charges for that billing period with the exception of the last month of each fiscal year. This is due to the fact that the labor charges end June 30 for the current fiscal year. However, several kinds of overhead charges such as supply

orders and travel expenses are paid after the fiscal year ends. The State Water Board Accounting Office keeps track of these charges and distributes them back to all of the accounts based on the number of hours charged to each account for the whole fiscal year that has just ended. Therefore, the quarterly statements for the last month of the fiscal year could show no labor hours charged for the billing period, but some overhead charges could be charged to the account.

Invoices are issued quarterly, one quarter in arrears. If a balance is owed, a check is to be remitted to the State Water Board with the invoice remittance stub within 30 days after receipt of the invoice. The Accounting Office sends a report of payments to the Fee Coordinator on a quarterly basis.

Copies of the invoices are sent to the appropriate Regional Water Boards so that they are aware of the oversight work invoiced. Questions regarding the work performed should be directed toward your Regional Water Board project manager.

Daily Logs

A detailed description (daily log) of the actual work being done at each specific site is kept by each employee in the Regional Water Board who works on cleanup oversight at the property. This information is provided on the quarterly invoice using standardized work activity codes to describe the work performed. Upon request, a more detailed description of the work performed is available from the Regional Water Board staff.

Removal From The Billing System

After the cleanup is complete, the Regional Water Board will submit a closure form to the State Water Board to close the account. If a balance is due, the Fee Coordinator will send a final billing for the balance owed. The responsible party should then submit a check to the State Water Board to close the account.

Agreement

The responsible party of the property is required to acknowledge that he/she agrees to reimburse the State for appropriate cleanup oversight costs. You may wish to consult an attorney in this matter.

Regional Water Board Dispute Resolution

Based on the Regional Water Board's review and comment, the following section has been added as a San Francisco Bay Regional Water Board attachment to the SCP Cost Recovery Program's "Guide to the Billing Process" enclosure, "Reimbursement Process for Regulatory Oversight".

The Regional Water Board staff proposes to provide each responsible party (upon request) with daily logs of actual oversight work done and supporting accounting

information for the responsible party's site. If, upon the receipt of the billing statement, the responsible party disputes the amount due, the responsible party may follow the dispute resolution procedure described below. If the responsible party follows the procedure, the Regional Water Board will not initiate, except as noted, enforcement action for failure to reimburse the State Water Board. During this procedure, the responsible party is encouraged to confer with Regional Water Board staff at any time to discuss the areas in question and attempt to resolve the dispute.

1. The responsible party must notify the Regional Water Board in writing within 30 calendar days of receipt of the billing statement to indicate that it disputes the billing statement and requests a meeting with the Regional Water Board Assistant Executive Officer. This notification must indicate the specific areas of dispute and provide all appropriate support documentation. Upon completion of the meeting, the Assistant Executive Officer will provide a recommendation to the Regional Water Board Executive Officer on the dispute and recommend an amount due, based on documentation provided by both the responsible party and the Regional Water Board staff at the meeting. The Executive Officer will submit a written decision and resultant amount due to the responsible party and specify the new due date by which the resultant amount due must be paid to avoid enforcement action. This due date will be not less than ten working days from the date of the Executive Officer's written decision.
2. If, upon receipt of the Executive Officer's written decision, the responsible party still disputes the amount due and so notifies the Executive Officer by the new due date, the Executive Officer will schedule an appeal hearing of the decision before the Regional Water Board at the next appropriate monthly meeting. The Executive Officer may also consider recommending that the Regional Water Board take enforcement action for the responsible party's failure to pay the resultant amount due by the new due date if the Regional Water Board finds the responsible party's appeal without basis. Any amount due and not appealed to the Regional Water Board will be considered a violation of the Regional Water Board's order.

California Code of Regulations - Dispute Resolution

If a dispute regarding oversight charges cannot be resolved with the Regional Water Board, Section 13320 of the California Water Code provides an appeal process to Regional Water Board decisions. Regulations implementing Water Code Section 13320 are found in Title 23 of the California Code of Regulations, Section 2050.

ATTACHMENT 2

STATE WATER RESOURCES CONTROL BOARD			
SITE CLEANUP PROGRAM (SCP)			
BILLING COST EXPLANATION			
Fiscal Year 2015-2016			
Employee Salary and Benefit by Classification [1]	Salary/Benefits Range		
	7500 - AEO CEA	\$ 9,017	
4558 - Admin Officer II	\$ 6,920		\$ 8,598
5871 - Assistant Chief Counsel	\$ 13,372		\$ 15,488
5393 - Associate Governmental Program Analyst (Statewide)	\$ 6,588		\$ 8,246
5778 - Attorney	\$ 6,997		\$ 12,190
5795 - Attorney III	\$ 11,503		\$ 14,758
5780 - Attorney IV	\$ 13,016		\$ 16,314
4707 - Business Serv Asst (Spec)	\$ 3,736		\$ 5,717
3756 - Engineering Geologist (SWRCB)	\$ 6,817		\$ 12,833
0760 - Environmental Program Manager I (Managerial) (SWRCB)	\$ 14,225		\$ 16,154
0756 - Environmental Program Manager I (Supervisory) (SWRCB)	\$ 12,865		\$ 15,994
0769 - Environmental Program Manager II (SWRCB)	\$ 14,931		\$ 16,962
0762 - Environmental Scientist (SWRCB)	\$ 4,538		\$ 8,676
3843 - Exec Officer I	\$ 15,911		\$ 18,073
3842 - Exec Officer II	\$ 16,299		\$ 18,514
5601 - Information Officer I (Spec)	\$ 6,588		\$ 8,246
1419 - Key Data Operator	\$ 3,224		\$ 4,587
1282 - Legal Secretary	\$ 4,548		\$ 5,980
1441 - Office Assistant (General) (Statewide)	\$ 3,105		\$ 4,272
1379 - Office Assistant (Typing) (Statewide)	\$ 3,209		\$ 4,358
1138 - Office Technician (General) (Statewide)	\$ 3,950		\$ 4,948
1139 - Office Technician (Typing) (Statewide)	\$ 3,626		\$ 5,034
3851 - Principal Water Resources Control Engineer	\$ 15,523		\$ 17,632
5373 - Public Participation Specialist	\$ 6,588		\$ 8,246
3826 - Sanitary Engineering Associate (Statewide)	\$ 7,245		\$ 9,068
3782 - Sanitary Engineering Technician (Statewide)	\$ 4,989		\$ 7,171
3751 - Senior Engineering Geologist (Statewide)	\$ 12,015		\$ 15,038
0764 - Senior Environmental Scientist (SWRCB)	\$ 11,126		\$ 13,831
0765 - Senior Environmental Scientist (Spec)	\$ 8,031		\$ 9,989
3224 - Senior Legal Typist	\$ 3,877		\$ 5,420
3844 - Senior Water Resources Control Engineer (SWRCB)	\$ 12,015		\$ 15,038
5157 - Staff Services Analyst (General)	\$ 4,218		\$ 6,857
4800 - Staff Services Manager I	\$ 7,590		\$ 9,449
5815 - Supervising Attorney	\$ 11,508		\$ 14,626
3748 - Supervising Engineering Geologist (Statewide)	\$ 12,776		\$ 15,994
3849 - Supervising Water Resources Control Engineer (SWRCB)	\$ 12,776		\$ 15,994
3850 - Supervising Water Resources Control Engineer (MGR)	\$ 14,129		\$ 16,051
3846 - Water Resources Control Engineer (SWRCB)	\$ 6,817		\$ 12,767
Intermittent Employees:			
1120 - Seasonal Clerk	\$ 9.18/hr		\$10.35/hr
1931 - Scientific Aid	\$11.81/hr		\$14.01/hr
4871 - Student Assistant Engineering (Statewide)	\$11.78hr		\$18.16/hr

ATTACHMENT 2

Note: The State is currently in negotiations with the unions so the upper limits of these ranges may be subject to change.			
Operating Expenses and Equipment [2] (both State and Regional Board offices)			
Indirect Costs (Overhead = cost of doing business)	125%		
Billing Example			
Water Resources Control Engineer			
Salary and Benefits:	\$12,767		
Overhead (indirect costs):	\$15,959		
Total Cost per month	\$28,726		
Divided by 173 hours per month equals per hour:	\$166.05		
(Due to the various classifications that expend SCP resources an average of \$ 150.00 per hour can be used for projection purposes			
[1] The name and classification of employees performing oversight work will be listed on the invoice you receive.			
[2] The examples are estimates based on recent billings. Actual charges may be slightly higher or lower.			

ATTACHMENT 3

**ACKNOWLEDGMENT OF RECEIPT OF
OVERSIGHT COST REIMBURSEMENT ACCOUNT LETTER**

I, John Sweeney, acting within the authority vested in me as an authorized representative of the property located at Point Buckler Island in Solano County, acknowledge that I have received and read a copy of the attached *REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT* and the transmittal letter, dated September 10, 2015, concerning cost reimbursement for Regional Water Board staff costs involved with oversight of cleanup and abatement efforts at Point Buckler Island in Solano County.

I understand the reimbursement process and billing procedures as explained in the letter. I also understand that signing this form does not constitute any admission of liability. Billings for payment of oversight costs should be mailed to the following individual and address:

BILLING CONTACT _____

BILLING ADDRESS _____

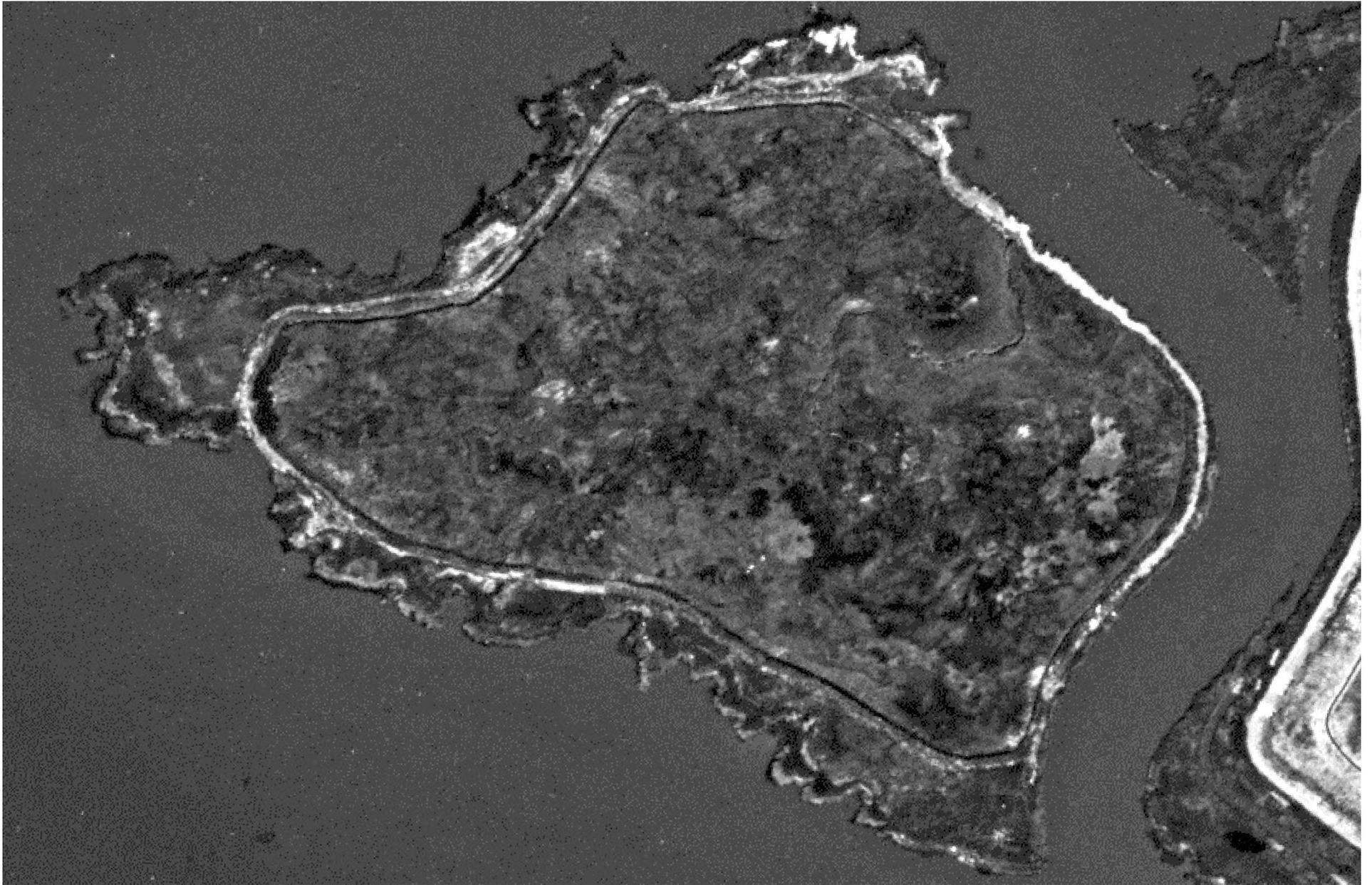
TELEPHONE NO. _____

RESPONSIBLE PARTY'S SIGNATURE _____

(Signature)

(Title)

DATE: _____



0 125 250 500 Feet

Point Buckler
1984

STANDARD AGREEMENT AMENDMENT

STD. 213 A (Rev 6/03)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 1 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
460000633	1
REGISTRATION NUMBER	

1. This Agreement is entered into between the State Agency and Contractor named below:

	<small>STATE AGENCY'S NAME</small>
	<u>Department of Water Resources</u>
	<small>CONTRACTOR'S NAME</small>
	<u>U.S. Bureau of Reclamation, Department of Fish and Game, and Suisun Resource Conservation District</u>
2. The term of this Agreement is March 2, 1987 through In perpetuity
3. The maximum amount of this Agreement after this amendment is: \$In perpetuity
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 1. To revise the Scope of Work to reflect significant events and changed conditions that have occurred since the original Agreement was signed. Exhibit A, Revised Suisun Marsh Preservation Agreement including attachments, are attached and made a part of this Agreement by this reference.
 2. To add Exhibit B with budget detail language. Exhibit B, Budget Detail and Payment Provisions, is attached and made a part of this Agreement by this reference.
 3. To add Exhibit C, General Terms and Conditions applicable to SRCD, which is attached and made a part of this Agreement by this reference.
 4. To add Exhibit CI, Special Terms and Conditions for the Department of Water Resources applicable to SRCD as a local public entity, which is attached and made a part of this Agreement by this reference.
 5. To add Exhibit D, General Terms and Conditions for Interagency Agreements applicable to DFG, which is attached and made a part of this Agreement by this reference.
 6. To add Exhibit D1, Special Terms and Conditions for the Department of Water Resources applicable to DFG, which is attached and made a part of this Agreement by this reference.
 7. To add Exhibit E, Special Terms and Conditions for the Department of Water Resources applicable to the U.S. Bureau of Reclamation, which is attached and made a part of this Agreement by this reference.
 8. To add Exhibit F, Standard Contract Provisions Regarding Political Reform Act Compliance, which is attached and made a part of this Agreement by this reference.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR	
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) See Signature Page 33	
BY (Authorized Signature) 	DATE SIGNED (Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS	
STATE OF CALIFORNIA	
AGENCY NAME See Signature Page	
BY (Authorized Signature) 	DATE SIGNED (Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS	

CALIFORNIA
Department of General Services
Use Only

Kay

APPROVED

JUN 26 2008

DEPT OF GENERAL SERVICES

John H.

Exempt per:

EXHIBIT A

REVISED SUISUN MARSH PRESERVATION AGREEMENT

**REVISED
SUISUN MARSH PRESERVATION AGREEMENT**

Among

**United States Bureau of Reclamation
California Department of Water Resources
California Department of Fish and Game
Suisun Resource Conservation District**

VERSION DATED

June 20, 2005

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ATTACHMENTS

The following attachments are made a part of this Revised SMPA by reference:

- A. Description of Existing Facilities
B. Responsibility for Suisun Marsh Facilities and Activities
C. Net Delta Outflow Index and Percent Inflow Diverted
D. Sacramento Valley Water Year Hydrologic Classification
E. Original Agreement

REVISED SUISUN MARSH PRESERVATION AGREEMENT

Among
United States Bureau of Reclamation,
California Department of Water Resources,
California Department of Fish and Game, and
Suisun Resource Conservation District

THIS REVISED SUISUN MARSH PRESERVATION AGREEMENT ("Revised SMPA") is made this [20th] day of [June], 2005, among the United States Bureau of Reclamation ("USBR"), California Department of Water Resources ("DWR"), California Department of Fish and Game ("DFG"), and the Suisun Resource Conservation District ("SRCD") (hereinafter referred to collectively as the "Parties").

On March 2, 1987, the Parties entered into the Suisun Marsh Preservation Agreement ("SMPA") which supersedes the Contract of Initial Facilities dated December 18, 1978 for the primary purpose of improving wildlife habitat on the Suisun Marsh managed wetlands. The Parties amended the SMPA by letter Amendment One, dated October 14, 1988, and letter Amendment Two, dated March 28, 1994. The SMPA and its letter amendments are referred to collectively as the "Original Agreement" of which a copy is attached to this Revised SMPA as Attachment E. For the reasons and on the terms set forth in this document, the Parties agree that the Original Agreement is hereby amended and known as the Revised SMPA and reads in its entirety as follows:

RECITALS

- A. In Section 29002 of the Public Resources Code, the California Legislature has found and declared that the Suisun Marsh ("Marsh") represents a unique and irreplaceable resource to the people of the State and the Nation and that it is the policy of the State to preserve and protect resources of this nature for the enjoyment of the current and succeeding generations. Further, Section 29003 of the Public Resources code provides that in order to preserve the integrity and assure continued wildlife use of the Marsh, including the preservation of its waterfowl carrying capacity and retention of the diversity of its flora and fauna, there is a need for the following:
1. Provisions for establishment and maintenance of adequate water quality.
 2. Improvement of present water management practices, including drainage and other water control facilities within the Marsh.
 3. Establishment of criteria for the production of valuable waterfowl food plants.

4. Provisions for future supplemental water supplies and related facilities to assure that adequate water quality will be achieved within the wetland areas.

These concerns have been recognized in the Plan of Protection ("Plan") developed by DWR.

- B. Public Law 99-546 authorizes the USBR to participate in the preservation of the Marsh. The value of preserving wetlands is recognized in Presidential Executive Order 11990 (Protection of Wetlands) dated May 24, 1977.
- C. A supply of adequate quality water is necessary to protect wildlife habitat in the Marsh. The Parties consider it to be in the public interest to manage the wetlands of the Marsh to produce adequate quality waterfowl habitat and grow certain waterfowl food plants.
- D. Upstream water use, including diversions by the Central Valley Project ("CVP") and the State Water Project ("SWP") has, at times, reduced outflow from the Delta, thus increasing salinity in the Marsh. The higher salinities have, at times, degraded waterfowl habitat in the Marsh. The Marsh has a salinity gradient between its western portion and its eastern portion, with ocean-derived salinity being greatest in the westerly portion.
- E. The Parties recognize that the water quality resulting from this Revised SMPA may, at times, be different than the quality of water which would be available in the Marsh in the absence of the SWP, the CVP, and other diversions by upstream users. Consequently, at times, landowners in the Marsh will need to employ more intensive management practices in the production of desirable waterfowl food plants.
- F. Resource conservation districts are authorized to enter into contracts with the United States and the State in furtherance of their powers.
- G. The SRCD is granted the primary local responsibility by Public Resources Code Section 9962 for regulating and improving water management practices on privately owned lands within the primary management area of the Marsh.
- H. The Parties recognize that the benefits and costs of implementing the Plan cannot be determined precisely. The division of responsibilities contained herein is deemed to represent a reasonable balance of equities.
- I. Article 4 of the Original Agreement requires periodic review of the effectiveness of the protective measures developed under that Agreement and a determination of whether its objectives are being achieved and if adjustments, made by amending that Agreement, are needed. In addition, Article 8(h) of the Original Agreement requires the Parties to renegotiate and amend that Agreement if either the Marsh model predictions or the Delta outflow/salinity relationships upon which that

Agreement is based are found to be substantially in error. Article 17 of the Original Agreement provides that it may be amended at any time by mutual agreement of USBR, DWR, DFG, and SRCD.

1. In November 2002, the Parties agreed to open negotiations to amend the Original Agreement based on Articles 4, 8(h), and 17 of that Agreement, and as a result of the events and changed conditions described below in Recital J.
 2. The Parties wish to amend the Original Agreement to provide measures that provide soil salinities for improved growth of forage for wildlife on managed wetlands and to meet the objectives of the Original Agreement.
- J. Since the date of the Original Agreement, the following events and changed conditions have led the Parties to this Revised SMPA:
1. In November 1988, DWR and USBR began operating the Suisun Marsh Salinity Control Gates ("SMSCG"). Evaluation of the SMSCG operation has shown that the gates can effectively reduce salinity in Montezuma Slough and the eastern regions of the Marsh, and to a lesser degree in most of the western regions of the Marsh. The SMSCG operation has proven to be more effective than was predicted.
 2. On December 15, 1994, federal and State agencies, and urban, agricultural, and environmental groups signed the "Principles for Agreement on Bay-Delta Standards Between the State of California and the Federal Government" ("Principles for Agreement"), also known as the "1994 Bay-Delta Accord".
 3. In May 1995, the State Water Resources Control Board (SWRCB) adopted the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("1995 WQCP") which incorporates many of the Principles for Agreement standards as water quality objectives for the Bay/Delta; and in July 1995, the SWRCB began the water rights hearing process for allocating responsibility for implementing the 1995 objectives.
 4. In December 1999, and as revised March 15, 2000, the SWRCB issued Water Rights Decision 1641 ("D-1641") to implement the water quality objectives in the 1995 WQCP. For protection of the Suisun Marsh, D-1641 requires DWR and USBR to report to the SWRCB by September 30 of each year on progress toward implementation of mitigation facilities and on water quality conditions in the Suisun Marsh during the previous salinity control season (D-1641, Condition 10, p. 149).

5. Construction of large scale water conveyance facilities throughout the Marsh, other than the Initial Facilities and the SMSCG, prescribed in the Original Agreement is no longer needed because:
 - a. Operation of the SMSCG has been more effective in helping to achieve the channel salinities described in Article III of this Revised SMPA than was predicted;
 - b. Implementation of the SWRCB D-1641 has significantly increased Delta outflow exceeding requirements of Decision 1485, and has resulted in lower salinity in Suisun Marsh channels than was anticipated when the Original Agreement was negotiated; and
 - c. Computer model simulations of Suisun Marsh channel salinity using the 1995 WQCP outflow objectives have shown
 - (1) Channel water salinity standards of the Original Agreement at stations C-2, S-64, S-49, S-21, and S-42 can be met with operation of the SMSCG except under rare circumstances which are provided for in Article III of this Revised SMPA.
 - (2) Channel water salinity standards of the Original Agreement near stations S-97 and S-35 can be met most of the time, with exceedences expected only in dry and critical years.
6. The CALFED Record of Decision¹ was released in August 2000. Following this release, CALFED requested that the SMPA agencies and the U.S. Fish and Wildlife Service (USFWS) work collaboratively to develop a "Charter" for resolving Suisun Marsh issues. The Charter was finalized and adopted in March 2001.
7. The CALFED Record of Decision identified programmatic actions for the Bay-Delta, including habitat restoration in Suisun Marsh. Specific restoration goals for the Marsh are identified in the Ecosystem Restoration Program (ERP) Plan² and include: (1) restoring tidal action to 5,000 - 7,000 acres in the Marsh and (2) enhancing 40,000 - 50,000 acres of managed seasonal wetlands. CALFED asked the Suisun Marsh Charter agencies to develop a comprehensive long-term implementation plan for meeting the ERP goals, while simultaneously meeting Suisun Marsh Charter needs for protection and enhancement of 1) pacific flyway

1 CALFED Bay Delta Program. 2000. Programmatic Record of Decision. Department of Water Resources. Sacramento, CA 134 pp. plus appendices.

2 Ecosystem Restoration Program Plan, 1999. Ecosystem Restoration Program Plan: Volume 2 – Ecological Management Zone Visions. Draft Programmatic EIS/EIR Technical Appendix. Department of Water Resources. Sacramento, CA. 459 pp.

- and existing wildlife values in managed wetlands; 2) endangered species; 3) tidal marshes and other ecosystems; and 4) water supply quality including, but not limited to, the maintenance and improvement of levees. Completion of the Habitat, Management, Preservation and Restoration Plan for Suisun Marsh (Suisun Marsh Plan), including necessary environmental documentation, is expected to take approximately two years, subject to availability of funding.
8. In lieu of large-scale water conveyance facilities, the Parties identified interim actions and additional future actions consistent with the Original Agreement objective to improve Marsh habitat. These interim actions, described in Articles VI, VII, and VIII of this Revised SMPA, are needed to: (1) provide funding for activities which assist in re-establishing a diverse plant assemblage and return soil salinities to levels characteristic of Suisun Marsh brackish soils; (2) maintain soil salinities within natural ranges as outlined by the Soil Conservation Service (1977); (3) improve water and wildlife habitat on managed wetlands throughout the Suisun Marsh; and (4) broaden mitigation activities to emphasize management, restoration projects, and studies to mitigate for impacts of this Revised SMPA to listed and sensitive species.
 9. The Parties recognize that the actions referenced in Recital J.8 may be carried out by SRCD and DFG under the April 2000, U.S. Army Corps of Engineers Regional General Permit Number 3 (Permit File Number 24215N) obtained by SRCD and DFG pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 or as it may be subsequently amended to permit certain work activities within the Marsh.
 10. Water management plays a pivotal role in achieving soil salinity and habitat goals beneficial to waterfowl in Suisun Marsh managed wetlands, and many of the additional actions referenced in Recital J.8 are intended to assist in providing such management.
 11. Creek flows entering the northwestern Suisun Marsh affect channel water salinities in this region. State Water Project and Central Valley Project operations and other diversions upstream of Chipps Island have not affected flow or water quality patterns in creeks north and west of Suisun Marsh. However, water users in the Marsh watershed have modified creek inflows to the Marsh. For example, urbanization and land development north and west of the Marsh affect the pattern of creek inflow, sediment, and water quality entering the Marsh.
 12. Increasing Delta outflow (as measured by the Net Delta Outflow Index) above D-1641 objectives is not an effective or practical method for controlling channel water salinity in the western Suisun Marsh.
- K. SRCD intends to facilitate the formation of reclamation districts necessary to protect the facilities constructed or actions implemented pursuant to this Revised SMPA.

- L. Where rights of way are required for work to be done under this Revised SMPA, SRCD intends to facilitate acquisition by DWR and/or USBR of the necessary easements and/or other appropriate title for each facility.

NOW, THEREFORE, in consideration of the mutual obligations in this Revised SMPA, the Parties agree as follows:

REVISED SMPA

Article I. Definitions.

When used herein, the term:

- A. "1995 WQCP" shall mean the State Water Resources Control Board 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary adopted in May 1995.
- B. "Channel Water Salinity" shall mean salinity of water in a channel of Suisun Marsh in which a Compliance Station, Control Station, or Monitoring Station is located.
- C. "Compliance Station" shall mean a water quality compliance monitoring station listed in Table 5 of D-1641 at which the SWRCB has defined a salinity water quality standard. Data collected at these stations is used to evaluate compliance with the water quality standards. Compliance stations are listed in Table 1 and shown in Figure 1 of this Revised SMPA.
- D. "Construction Season" shall mean the period February 15 to October 15 of any year.
- E. "Control Season" shall mean the period October 1 of any year through May 31 of the following year.
- F. "Control Station" shall mean a Monitoring Station (defined below) at a location listed in Table 2 and shown in Figure 1. Salinity data from the Control Stations will be used to trigger the Drought Response Program as described in Article VII.B.4.
- G. "D-1641" shall mean the State Water Resources Control Board Water Right Decision 1641 *Implementation of Water Quality Objectives for the San Francisco Bay/Sacramento San-Joaquin Delta Estuary* adopted in December 1999 and revised on March 15, 2000.
- H. "Deficiency Period" shall mean: (1) a Critical Year following a Dry or Critical Year; or (2) a Dry Year following a year in which the Four Basin Index was less than 11.35 MAF; or (3) the second consecutive Dry Year following a Critical Year. The determination of a Deficiency Period is made using the prior year's final Water Year Type determination and a Forecast of the current year's Water Year Type; and

remains in effect until a subsequent water year is other than a Dry or Critical water year as announced by DWR and USBR as the final water year determination.

- I. "Delta" shall mean the Sacramento-San Joaquin Delta as it is presently defined in Section 12220 of the Water Code.
- J. "Electrical Conductivity" ("EC") shall mean the electrical conductivity of a water sample measured in millimhos per centimeter (mmhos/cm) corrected to a standard temperature of 25 degrees Celsius (which is the same as specific conductance expressed as milliSiemens/cm) determined in accordance with procedures set forth in the publication entitled, "Standard Methods of Examination of Water and Waste Water", published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, 20th Edition, 1998, including such revisions thereof as may be made subsequent to the date of this Revised SMPA which are approved in writing by the Parties.
- K. "Existing Facilities" shall mean the Initial Facilities, Suisun Marsh Salinity Control Gates ("SMSCG", also referred to as the Montezuma Slough Control Structure), Cygnus Unit, and Lower Joice Island Unit with fish screen, as described in Article VII and Attachment A. Ownership and management of Existing Facilities is specified in Attachment B.
- L. "Exterior Levees" shall mean levees which protect the Marsh against inundation and uncontrolled flooding and are identified in the "Suisun Marsh Levee Evaluation" report dated February 1983, prepared by Ramlit Associates for the U.S. Army Corps of Engineers.
- M. "Forecast" shall mean a preliminary determination of the Water Year Type made by DWR at the beginning of each February, March, April, and May and published in DWR Bulletin 120, Water Conditions in California.
- N. "Four Basin Index" or "Sacramento River Index" shall mean the sum of the unimpaired runoff in the Water Year as published in DWR Bulletin 120 for the following locations: Sacramento River above Bend Bridge, near Red Bluff; Feather River, total unimpaired inflow to Oroville Reservoir; Yuba River at Smartville; American River, total unimpaired inflow to Folsom Reservoir.
- O. "Individual Ownership" shall mean separate, privately owned parcels of land in the Marsh, or contiguous parcels owned by the same legal entity, other than those on Roe, Ryer, Freeman, and Snag Islands or the owners thereof.
- P. "Individual Ownership Management Plan(s), also known as Individual Ownership Adaptive Management Habitat Plan(s)" shall mean the plan(s) prepared by SRCD consisting of a water, land and vegetation management program for each managed wetland in private ownership within the Marsh primary management area and

includes site specific information to enable effective and efficient management of these lands. The plans are authorized pursuant to the Suisun Marsh Preservation Act of 1977, Section 29413 of the Public Resources Code.

- Q. "Initial Facilities" shall mean the facilities for the Roaring River Slough Unit (also known as Roaring River Distribution System), the Goodyear Slough Outfall, and the Morrow Island Distribution System constructed pursuant to the contract of December 18, 1978.
- R. "Marsh" shall mean the Suisun Marsh as it is presently defined in Section 29101 of the Public Resources Code.
- S. "Marsh Model" shall mean the DWR Delta Simulation Model (Suisun Marsh Version 8A (1996)) consisting of hydrodynamic, salinity transport, and managed wetland operations. The computer model was: (1) originally developed by Hugo Fischer, Inc., as MRSHFLO and MRSHQAL under contract with USBR; (2) modified by USBR and DWR for the Original Agreement; (3) incorporated into the Fischer Delta Model (Version 7E) by Flow Science, Inc.; and (4) modified to its current version by DWR, Suisun Marsh Branch.
- T. "Monitoring Station" shall mean a water quality monitoring station necessary to collect information for stage and salinity analysis. Monitoring stations are listed in Table 3 and shown in Figure 1.
- U. "Net Delta Outflow Index" shall mean an index of net Delta outflow estimated daily by USBR and DWR, as described on page 190 of D-1641, and archived in the DWR DAYFLOW database. (See Attachment C.)
- V. "Plan of Protection" or "Plan of Protection for the Suisun Marsh" or "Plan" shall mean the plan prepared by DWR dated February 1984 in fulfillment of Condition 7 of SWRCB Decision 1485 to mitigate the effects of the CVP and SWP and other diverters upstream of Chipps Island.
- W. "Progressive Daily Mean (PDM)" shall be defined as the monthly average of both daily high-tide specific conductance values. The mathematical equation is shown below. New PDM calculations begin at the start of each calendar month.
- $$\text{PDM} = \frac{\sum \text{daily average of high tide EC}}{\# \text{ days of the month}}$$
- X. "Water Year" or "Year" shall mean the period October 1 of any year through September 30 of the following year.

- Y. "Water Year Type" (i.e., "Wet Year", "Above Normal Year", "Below Normal Year", "Dry Year" and "Critical Year") are defined on page 188 of D-1641. (See Attachment D.)

Article II. Objective

The objectives of this Revised SMPA are:

- A. To assure that USBR and DWR maintain a dependable water supply of adequate quantity and quality within the Marsh to mitigate the adverse effects on the Marsh of the CVP and SWP and a portion of the adverse effects of the other upstream diversions;
- B. To improve Marsh wildlife habitat to the extent that such improvement is compatible with other CVP and SWP purposes;
- C. To define the scope of the obligations of USBR and DWR to provide the water supply, distribution, redistribution, and management facilities; and supplemental actions necessary to accomplish the objectives in A and B; and
- D. To assure that USBR and DWR recognize that the water users within the Marsh have been diverting and will continue to divert water for wildlife habitat management within the Marsh.

Article III. Channel Water Salinity Standards

- A. DWR and USBR shall meet the channel water salinity standards shown in Table 1 with operation of facilities as specified in Article VII.A. During a Deficiency Period, as described under Article I.H., the standards for "All Water Year Types" shall be replaced with the standards for "Deficiency Period" and shall only apply to S-21 and S-42. During a deficiency period, standards for C-2, S-64, and S-49 are suspended.
- B. The parties recognize that lower channel water salinity will be present at some Compliance Stations due to the salinity gradient within the Marsh
- C. During Deficiency Periods a good faith effort will be made to meet the Standards in Table 1 at the eastern Marsh stations C-2, S-64, and S-49, and the following conditions apply:
 - 1. If the Standards are not met in one or two months during a Control Season at one or more of the eastern stations, the Parties agree to waive the Standards during these months.

2. If the Standards are not met for more than 2 months during a Control Season at one or more of the eastern stations, the Parties agree to waive the Standards during these months and the Drought Response Program will be deemed triggered and funded as provided in Article VII.B.
 3. If the Standards are not met for more than 4 months in any two consecutive Control Seasons at one or more of the eastern stations, the Parties agree that the basis for this Revised SMPA is in error and will initiate discussions to amend this Agreement as provided for in Article XIV.
- D. DWR and USBR will notify DFG and SRCD in the event any standard in Table 1 is projected to be exceeded by more than 0.2 mS/cm to discuss and resolve any concerns consistent with the procedures in Article XII.A. and Article XIII.B.
- E. DWR and USBR will bear the burden of proving that their efforts to meet the Standards were made in good faith.

Article IV. Review of Operations

- A. Every fifth year after this Revised SMPA is executed the Parties will review the effectiveness of the forecasting and planning tools, operations, facilities, and actions taken pursuant to this Revised SMPA. The purpose of the review will be to determine if objectives of this Revised SMPA are being achieved and if any adjustments are needed. Information on the relationships among water salinity, soil water salinity, and plant salinity tolerance gained from the Marsh monitoring program, effectiveness of the implementation of the revised Individual Ownership Management Plans, and performance and accuracy of the Marsh Model shall be considered during the review. Results of the review will be considered to determine whether a need exists to amend this Revised SMPA to achieve the Revised SMPA objectives.
- B. Any necessary adjustments as determined by the Parties will be made by amending this Revised SMPA, the Suisun Marsh Mitigation Agreement, and/or the Suisun Marsh Monitoring Agreement.

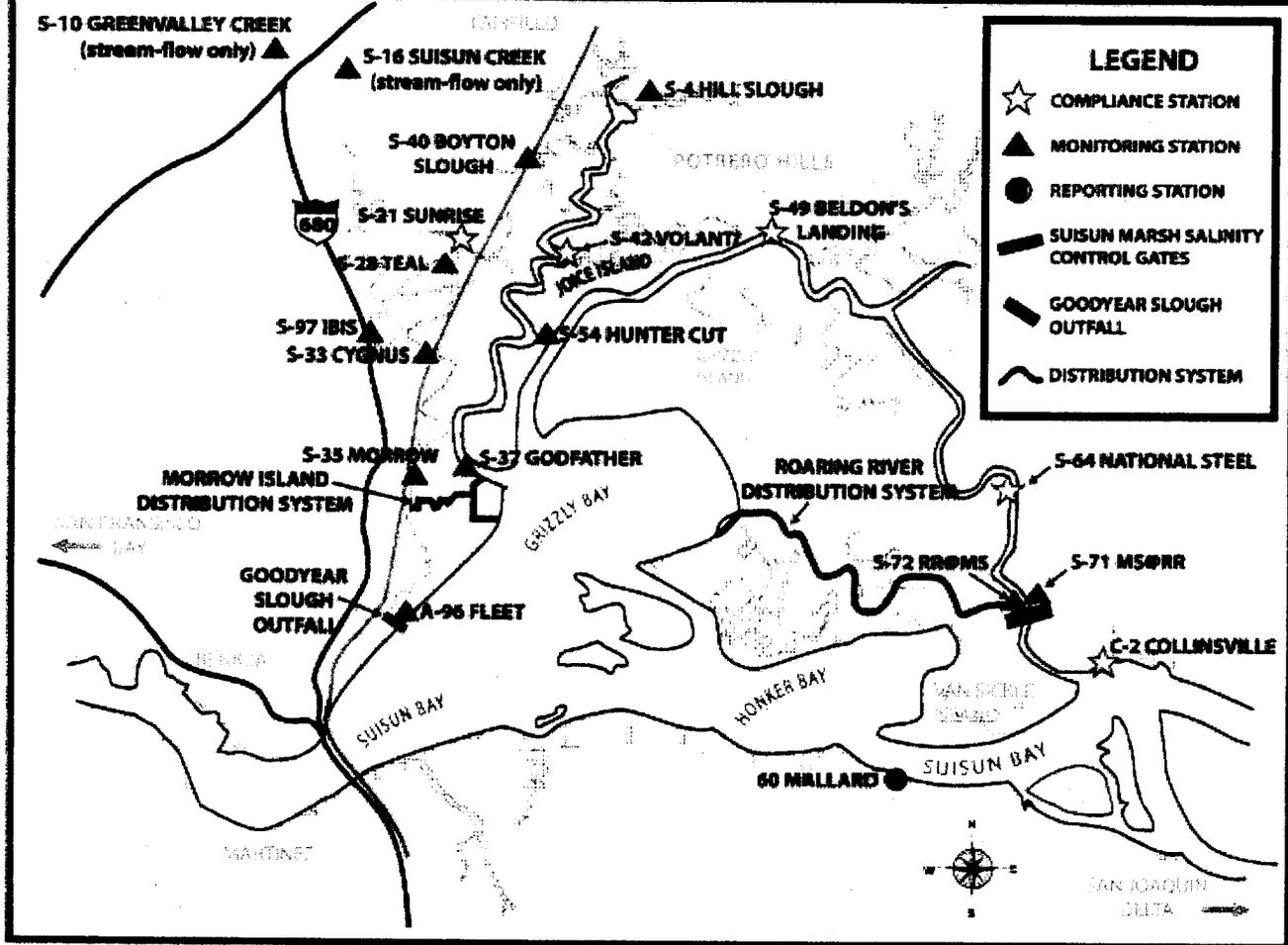
TABLE 1. SUISUN MARSH CHANNEL WATER STANDARDS

Compliance Location	Interagency Station Number ¹	Description	Time Period	Value (EC)
EASTERN MARSH				
Sacramento River at Collinsville	C-2 (RSAC081)	Progressive Daily Mean = mean of daily average high-tide EC of the month. See Article I.W for the mathematical equation.	All Water Year Types	
Montezuma Slough at National Steel	S-64 (SLMZU25)		October	19.0
Montezuma Slough near Beldon Landing	S-49 (SLMZU11)		November - December	15.5
			January	12.5
		February - March	8.0	
			April - May	11.0
WESTERN MARSH				
Chadbourne Slough at Sunrise Duck Club	S-21 (SLCBN1)	Progressive Daily Mean	All Water Year Types	
Suisun Slough, 300 feet south of Volanti Slough	S-42 (SLSUS12)		October	19.0
		November	16.5	
		December	15.5	
		January	12.5	
		February - March	8.0	
		April - May	11.0	
			Deficiency Period²	
			October	19.0
			November	16.5
			December - March	15.6
			April	14.0
			May	12.5

TABLE 2. SUISUN MARSH CONTROL STATIONS

Control Station Location	Interagency Station Number ¹	Drought Response Fund Trigger Value (PDM in mS/cm)	
Goodyear Slough at Morrow Island Clubhouse	S-35 (SLGYR003)	October	20.0
		February - March	9.0
		April - May	12.0
Cordelia Slough at Ibis Club	S-97 (SLCRD006)		

1. Parenthetical contains the River Kilometer Index station number. See Figure 1 for locations.
2. See definition of "deficiency period" in Article I.H. These Deficiency Period standards are only applicable to S-21 and S-42.



Contract No. 4600000633.1
 Figure 1

Article V. Monitoring

- A. The Parties to this Revised SMPA will monitor and report in accordance with the Monitoring Agreement to provide for monitoring in the Marsh dated March 2, 1987 ("Monitoring Agreement") or as it may be revised or amended. Monitoring Stations for the Suisun Marsh are listed in Table 3 "Suisun Marsh Monitoring Stations" and shown in Figure 1.
- B. The Parties shall revise or amend the Monitoring Agreement to include: monitoring of activities required by this Revised SMPA; the evaluation described in Article XV.F.; and SRCD as a participant in the Revised Monitoring Agreement and monitoring program.
- C. The monitoring program shall include stage and channel water EC monitoring at Goodyear Slough at Morrow Island Clubhouse ("S-35") and at Cordelia Slough at Ibis Club ("S-97"). The monitoring stations at S-97 and S-35 are important indicators of western Marsh salinity conditions and will be used in triggering SMSCG operation to meet standards in Table 1, as well as the Drought Response Program described in Article VII.B.

Article VI. Mitigation

- A. USBR, DWR, and DFG shall provide wetlands mitigation specified in the Suisun Marsh Mitigation Agreement among DWR, DFG and USBR, dated March 2, 1987, or as it may be revised or amended, and in accordance with applicable U.S. Army Corps of Engineers permits and with biological opinions required for activities in the Marsh. The measures set forth in the Revised Suisun Marsh Mitigation Agreement will provide:
 1. Multispecies habitat for the adverse impacts on wetland habitat, listed and sensitive species, and waterfowl in the Suisun Marsh resulting from implementing actions and construction required under this Revised SMPA.
 2. Multispecies habitat for any adverse effects on Roe, Ryer, Snag, and Freeman Islands resulting from upstream water diversions.
 3. Restoration of tidal wetlands and acquisition, management, and maintenance of conservation lands to achieve the goal of 2,500 acres of preferred salt marsh harvest mouse habitat.

TABLE 3. SUISUN MARSH MONITORING STATIONS

Monitoring Location	Interagency Station Number (River Kilometer Index)	Monitoring Parameters
Goodyear Slough at Goodyear Slough Outfall	A-96 (SLGYR008)	EC
Hill Slough at Grizzly Island Road	S-4 (SLHIL002)	Stage/EC
Green Valley Creek above Interstate 80	S-9 (SLMZS9)	Stage/Flow
Suisun Creek at Cordelia Road	S-16 (SLCSS16)	Stage/Flow
Teal Club	S-28 (SLFHN002)	EC
Cordelia Slough at Cygnus	S-33 (SLCRD003)	Stage/EC
Goodyear Slough at Morrow Island Clubhouse ¹	S-35 (SLGYR003)	Stage/EC
Suisun Slough at Godfather	S-37 (SLGFII011)	EC
Boynton Slough near SP tracks	S-40 (SLBOY003)	Stage/EC
Hunter Cut at Montezuma Slough	S-54 (SLMZU003)	Stage/EC
Montezuma Slough at Roaring River Distribution System	S-71 (SLMZU029)	Stage/EC/Temp.
East end of Roaring River Distribution System at Hammond Pond	S-72 (SLRAR000)	Stage/EC
Cordelia Slough at Ibis Club ¹	S-97 (SLCRD006)	Stage/EC

1. These stations are SWRCB baseline monitoring stations (Table 5, D-1641).

- B. The Environmental Coordination Advisory Team ("ECAT"), established under Article XII, will ensure compliance with mitigation requirements of Revised SMPA and related permits and biological opinions.
- C. The USBR and DWR shall evaluate and develop measures to mitigate impacts of the SMSCG on adult Chinook salmon passage in a manner consistent with Articles II and III of this Revised SMPA.
- D. The Parties shall revise or amend the Mitigation Agreement to include SRCD as a party thereto.

Article VII. Construction and Operation of Facilities and Implementation of Actions

A. Construction and Operation of Existing Facilities

1. USBR and DWR will operate the Initial Facilities and the SMSCG for the purposes of meeting the channel water salinity standards in Article III. DWR shall construct the Annie Mason Island Unit by the end of the second construction season following repairs of the Exterior Levees that are mutually agreeably by the Parties to the Revised SMPA.
2. The Initial Facilities and the SMSCG will be operated, and actions required by this Revised SMPA will be taken, to provide lower channel water salinities in the Marsh than those specified in Table 1, but only so far as such operations or actions significantly benefit wildlife habitat, do not create a need for additional upstream water releases, do not limit exports, do not harm fishery resources, and do not require that the SMSCG stoplogs remain in place beyond the time otherwise required to meet this Revised SMPA. The Coordination Committee (described in Article XII) will discuss the significance of potential impacts to fishery and wildlife resources attributed to SMSCG operations or other actions required by this Revised SMPA before any changes are made to such SMSCG operations or actions.
3. If structural impairments require repairs of the SMSCG that result in a prolonged outage such that it is inoperable and meeting provisions of Article III is not possible, the Parties agree to waive the Table 1 Standards until the month following completion of repairs. If any structural failure results in the inability to operate the SMSCG, DWR and USBR shall repair the SMSCG as quickly as reasonably possible, unless mutually agreed to by the parties to this Agreement.
4. If SMSCG operations are significantly changed by regulatory actions, making it infeasible to meet Table 1 Standards of Article III, the Parties agree that this

represents a significant project modification and will: (1) initiate discussions to amend this Revised SMPA, (2) continue operating the SMSCG to the extent possible to accomplish the purposes of this Revised SMPA, including a good faith effort to meet the Standards in Table 1, and (3) waive enforcement of Table 1 Standards during the period of Agreement renegotiation.

5. USBR and DWR shall provide funds to SRCD for realigning and stabilizing turnouts from the Roaring River Slough Unit to improve water management on Individual Ownerships and DFG lands. SRCD shall coordinate construction of improvements with DWR.
6. DWR and USBR have constructed and completed testing of a fish screen for the Lower Joice Island. This fish screen has become the property of the Individual Ownership which is responsible for operation and maintenance. DWR and USBR shall have no further responsibilities for operation and maintenance and/or for any costs associated with the fish screen.
7. Control stations S-97 and S-35 EC values will be used as water quality indicators to determine SMSCG operations to meet the water quality standards in Table 1.

B. Additional Actions

SRCD shall implement the following four actions, which will be funded by DWR and USBR as provided by Article VIII. The actions may be implemented concurrently and the listing below does not indicate any required order of implementation. Certain responsibilities related to the activities are further described in Attachment B.

1. Water Manager Program

SRCD shall institute a Water Manager Program and employ support staff to help coordinate and improve water management practices on Individual Ownerships throughout the Marsh. The Water Manager Program shall include, but not be limited to, the following services or duties throughout the Marsh:

- a. Assist in implementation of yearly management strategies as outlined in the Individual Ownership Adaptive Management Habitat Plans ("IOAMHP") (described in Subarticle B.3) and agreed to by the landowners.
- b. Promote and encourage wetland management activities such that flooding, draining and circulation occur at the appropriate critical times of the year to produce desired wildlife habitats.
- c. Provide technical support in the field to answer questions and educate landowners on beneficial management techniques, the protection and

enhancement of endangered species habitat, management of water application, and provide new scientific information pertaining to common management activities.

- d. Supervise and coordinate the portable pump program (described in Subarticle B.2) to ensure proper maintenance and operation of the pumps.
- e. Assist landowners in planning yearly maintenance and enhancement projects.
- f. Assist landowners in completing the USACE yearly maintenance permit application.
- g. Annually update the IOAMHP (Subarticle B.3).
- h. Activities may include assisting DFG on water management of State owned property, assisting in yearly salt marsh harvest mouse monitoring, California clapper rail surveys, and inspections of levees during storms to identify damages and assist in flood fight coordination.

2. Portable Pumps Program

- a. SRCD shall implement this Program in coordination with the Water Manager Program. The Water Manager, under SRCD's direction, will use portable pumps provided by this Program for the benefit of Marsh managed wetlands to provide better removal of soil salts during drainage. The pumps shall be moved throughout the Marsh to provide the most benefit as determined by the Water Manager to obtain an effective leach.
- b. SRCD shall be responsible for and oversee the operation and maintenance and distribution of the portable pumps. SRCD shall be required to obtain any necessary permits and meet permit obligations for the portable pump operation. DWR, DFG, and the USBR will cooperate and support SRCD's efforts to obtain any necessary permits and meet permit obligations for the portable pump operation.
- c. SRCD shall make the pumps available for draining operations on Individual Ownerships and DFG lands, as described below:
 - (1) In those managed areas of low pond bottom elevations, portable pumps will be used to effectively remove or accelerate the drainage of high saline soil water and to facilitate the ability to flood and drain within 30 days. Most of the Marsh can tidally drain if mean pond bottom elevation (mean low low water (MLLW) at the Golden Gate) is 2.7 feet or higher. The controlling elevation becomes 3.3 feet in the northwest corner of the Marsh due to silting of the sloughs.

(2) The entire Suisun Marsh will benefit from portable pumps for drainage where: the mean pond bottom elevations of the wetlands are lower than the elevations stated above, and pumps are needed to drain and leach the property, and to drain isolated low wetlands to remove barren spots with high soil salts; the lowest tides do not have enough dwell time to permit tidal drainage; or pumping is necessary to avoid evaporative salt buildup throughout the soil profile.

(3) The pumps will not be used during times, and in the locations of, known low dissolved oxygen events, including Boynton and Peytonia Sloughs. These areas are adjacent to higher elevation wetlands, thus pumps will not be needed.

3. Individual Ownership Adaptive Management Habitat Plans Program

a. SRCD shall update the IOAMHP annually. These IOAMHP will provide landowners multiple management strategies, incorporate new science and management techniques, and protect and conserve brackish marsh diversity while enhancing and sustaining wildlife values within the managed wetlands. Each IOAHMP shall include the following information:

- (1) Description and location of existing facilities
- (2) Description and location of new facilities
- (3) Description and location of needed improvements
- (4) Soil classification maps
- (5) A management strategy
- (6) Vegetation Identification Booklet
- (7) Suisun Marsh facility standards
- (8) Elevation on water control facilities with relationship to tidal datum.

b. Upon completion of each IOAHMP, SRCD shall provide a copy to SMPA Parties as requested.

4. Drought Response Program

a. The purpose of the Drought Response Program is to compensate landowners, including DFG for lands it manages in the Marsh, who, because of drought conditions, have no alternative but to apply higher salinity channel water and, therefore, must more intensively manage these lands.

b. During any year that "drought response criteria" as described in the following Subarticle c trigger the need for drought response activities and for one additional year beyond the last year of drought response, DWR and USBR shall provide funding and payment as described in Article VIII.

- c. The following drought response criteria and allocation of funding are based on a frequency of monthly occurrence of salinity values above Table 1 standards, specifically a 40% frequency (2 out of 5 months) and 1.0 mS/cm exceedence of the Progressive Daily Mean over Table 1 values. These criteria are intended to represent probable drought impact on accumulated soil salinity.
- (1) Drought response criteria and funding shall occur in any of the following two conditions:
 - i. Deficiency Period is in effect and trigger values of Table 2 are exceeded at Monitoring Stations S-35 or S-97 when ownerships are filling from affected sloughs or channels in any two or more of the following months: October, February, March, April, or May; or,
 - ii. Deficiency Period has been in effect for more than one year and trigger values of Table 2 are exceeded at any Compliance Station from Table 1 when ownerships are filling from affected sloughs or channels in any two or more of the following months: October, February March April or May; or,
 - (2) If condition 1(i) occurs, then SRCD shall allocate all drought response funds to the western Suisun Marsh. If condition 1(ii) occurs, then SRCD shall allocate at least 75 percent of the drought response funds to the western Suisun Marsh and may allocate up to 25 percent of the drought response funds to the eastern Suisun Marsh. For purposes of this section, the western Suisun Marsh includes all lands that divert water from sloughs west of Suisun Slough, but not including Suisun Slough. SRCD shall consider recommendations and data provided by the Water Manager to determine allocation of the drought response funds to the Individual Ownerships. When the trigger values are exceeded the Water Manager may monitor channel salinity adjacent to Individual Ownership water inlet facilities to assist SRCD in determining affected lands and the need for funding.
- C. Descriptions of facilities and actions under this Article VII will be furnished to the Coordination Committee, described in Article XII, for review and comments. Comments must be provided within 30 working days of receipt of the description.
- D. USBR and DWR shall modify the Existing Facilities or their operation in accordance with Subarticle C above to provide Individual Ownerships, DFG, or SRCD the ability to achieve adequate water levels for waterfowl food production consistent with the IOAHMP within the constraints identified in Article III and/or any additional regulatory constraints.

- E. The responsibility for planning, environmental documentation, implementation, funding, operation and maintenance of facilities and actions implemented shall be as listed in Attachment B. USBR and DWR shall coordinate in funding of Attachment B responsibilities in accordance with Articles XI and XXV.

Article VIII. Funding Amount and Payment to SRCD for SMPA Activities

- A. For activities undertaken by SRCD pursuant to Articles VII and VIII of this Revised SMPA and any amendments, DWR and USBR shall provide funds, paid through DWR, in accordance with Articles XI and XXV, to SRCD by payment methods described in this Article:

1. DWR shall make payments to SRCD not more frequently than monthly for the actions and programs required under this Revised SMPA, following the receipt by DWR of SRCD's itemized invoice for work performed. Invoices must be identified by contract number 460000633 and appropriate Internal Order Number and addressed to:

Department of Water Resources
Attn: Suisun Marsh Preservation Agreement Coordinator
3251 'S' Street
Sacramento, CA 95816

2. Where necessary, other agreements may be executed to implement the specific actions and programs required under this Revised SMPA. Such agreements shall not increase the funding available for these actions and programs unless all Parties agree to an increase and have appropriately amended this Revised SMPA. Such agreements shall provide that DWR and USBR shall make payments to SRCD as in Subarticle A.1. above and will include, where appropriate, provisions for progress payments to SRCD.
 3. DWR and USBR may take actions they deem necessary including the right to inspect installed facilities, the right to audit accounts relating to the facilities, and the right to protect their interest in case of default to verify compliance with requirements of this Article.
- B. In partial fulfillment of its mitigation requirements to SRCD, under SWRCB D-1641, for DWR and USBR operation of the SWP and CVP and effects in Suisun Marsh, DWR and USBR shall provide a one-time payment of \$218,200 to SRCD upon execution of the Revised SMPA.
1. SRCD shall use \$58,200 of this payment for start-up costs of the Water Manager and IOAHMP Programs and \$160,000 for the Portable Pumps Program, which is included as part of the maximum funding for these programs.

2. SRCD shall document and report these expenditures to DWR and USBR in the quarterly progress reports required below under Subarticle D. If SRCD uses these monies for purposes not in accordance with this subarticle, SRCD shall repay to DWR and USBR the amount expended with interest at the rate of 10 percent per annum calculated from the date payment was provided to SRCD.
- C. Maximum funding from DWR and USBR to SRCD for actions specifically described in Article VII shall be:

1. Water Manager and IOAHMP Programs:

The Water Manager and IOAHMP Programs will be funded as an annual activity conducted by SRCD. The Water Manager staffing will be phased in as landowner participation and implementation of the programs dictate.

- a. The maximum amount expended for annual operating costs each year the program continues shall not exceed \$234,190.
- b. The maximum amount expended for start-up costs shall not exceed a total of \$130,600. This includes the first-year start-up costs of \$58,200 to be paid upon execution of the Revised SMPA.
- c. DWR shall make monthly payments based on itemized invoices which will include, but are not limited to, labor, equipment, materials, travel, overhead, and costs. SRCD's estimated annual operating budget and start-up costs for these Programs are shown in Tables 4 and 5.

2. Portable Pumps Program:

- a. Except as allowed below by Subarticle C.2.b, the maximum amount expended shall not exceed \$547,757 for portable pumps, portable fuel tanks, maintenance equipment, and associated maintenance costs, including funds provided above pursuant to Subarticle B.
- b. Upon agreement of the parties, the funding shall be increased to purchase additional portable pumps.
- c. DWR shall make payments based on SRCD's itemized invoice identifying the costs of each portable pump, portable fuel tank, maintenance equipment and associated maintenance costs. The estimated cost for each pump is \$20,000.

Table 4. Annual Estimated Operating Budget for Water Manager and IOAHMP Programs ¹

Item	Quantity	Unit Cost (Dollars)	Extended Costs ² (Dollars)
Supervisor ³	One half-time	48,000	24,000
Water Manager ³	Three full-time	37,000	111,000
Payroll Tax and Staff Benefits	32.6 percent		44,010
Operating Expenses			18,100
Overhead	18.8 percent		37,080
Annual Total Cost			\$234,190

1. This Budget does not include administrative start-up costs of the Water Manager and IOAHMP programs.
2. These are estimated amounts and SRCD may transfer funds among budget line items if less than or equal to 20 percent of the item total. SRCD may transfer more than 20 percent of the line item total with prior written approval of USBR and DWR.
3. Employees will be hired for duties needed to fulfill requirements of Article VII.

Table 5. Estimated Start-up Costs for Water Manager and IOAHMP Programs

Item	Quantity	Unit Cost (Dollars)	Extended Costs (Dollars)
Office Space	1	22,000	22,000
Vehicles	3	26,000	78,000
All Terrain Vehicle	3	5,500	16,500
Computer	3	1,700	5,100
Equipment and Supplies	3	1,500	4,500
Office Furniture	3	1,500	4,500
Total Cost			\$130,600 ¹

1. Includes \$58,200 that will be paid to SRCD upon execution of the Revised SMPA for first-year start-up costs.
2. These are estimated amounts and SRCD may transfer funds among budget line items if less than or equal to 20 percent of the item total. SRCD may transfer more than 20 percent of the line item total with prior written approval of USBR and DWR.

3. Improvements to Roaring River Slough Unit Turnouts:

- a. The maximum amount expended for this action shall not exceed \$67,164.
- b. DWR shall make payments based on SRCD's itemized invoice identifying the location and cost of each turnout improvement.

4. Drought Response Fund:

\$80,596 per year, adjusted for inflation as provided below by Subarticle F, and shared in accordance with Articles XI and XXV, shall be paid to SRCD for payment to private landowners and to DFG for drought response activities on adversely affected lands. Of the \$80,596, SRCD shall reserve \$11,194 for DFG drought response activities.

D. SRCD shall provide to DWR and USBR the following:

1. An annual budget forecast on or before January 1 for activities funded under this Revised SMPA for the upcoming State Fiscal Year (July 1 - June 30).
2. Quarterly progress reports on or before: July 1, October 1, January 1, and April 1, identifying activities undertaken pursuant to this Revised SMPA, including an accounting of costs of those activities.

E. Any real or personal property purchased by SRCD, at its expense, necessary for the actions, programs, or facilities required under Articles VII or VIII shall become the property of SRCD in consideration of SRCD meeting obligations of this Revised SMPA. SRCD shall have full responsibility for operation and maintenance of such property and DWR and USBR shall have no obligation or incur additional expenses for such property. SRCD shall hold DWR and USBR harmless for any damages, claims, or liability associated with such property.

F. Each year in July, the Annual Estimated Budget for the Water Manager and IOAHMP Program (Table 4) shall be adjusted to July 2003 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in costs using USBR's "Water Systems Operational Maintenance Cost Trends". Similarly, any unexpended funds of the Estimated Start-up Costs for the Water Manager and IOAHMP Program (Table 5) shall be adjusted to July 2003 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in costs using USBR's "Water Systems Operational Maintenance Cost Trends".

Article IX. Public Access

Lands owned or to be acquired in fee title by the State, which are used for the construction or maintenance of the Existing Facilities or as mitigation lands under this Revised SMPA, may be accessible to the public for recreation use. With the exception of lands under DFG ownership and management, USBR and DWR shall mutually determine after consultation with DFG and SRCD the extent to which such lands should be used for recreation consistent with safety, operational needs and potential damage to other lands.

Article X. Rights of Way

Delay in acquisition of rights of way that are required for work to be done under this Revised SMPA may delay completion or maintenance of a facility or implementation of an action but shall not change the responsibility of DWR and USBR to complete that facility or implement an action as expeditiously as possible.

Article XI. DWR and USBR Cost Sharing

- A. USBR shall pay Forty Percent (40%) and DWR shall pay Sixty Percent (60%) of the costs assigned to DWR and USBR pursuant to Articles III, IV, V, VI, VII, VIII, XII, and XXV, whether incurred prior to the date of this Revised SMPA or thereafter. The term "costs" shall include costs of planning, design, environmental documentation, construction, operation (including boat lock passage), maintenance, and mitigation. The term "costs" shall also include all administrative overhead, costs of liability insurance or pooling programs and other costs similar to those normally incurred by USBR and which will be incurred by DWR in performance of the obligations under this Revised SMPA.
- B. USBR's share of design, planning, environmental documentation, mitigation and construction costs shall not exceed \$50 million, July 1985 dollars, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in construction costs, as indicated by the "Engineering News-Record's" cost indexes.
- C. The United States shall pay to DWR the costs determined to be allowable by USBR in accordance with the terms of this Revised SMPA and with provisions of Federal Acquisition Regulations (FAR), Part 31, Subpart 6, 48 CFR Sections 31.601-31.603. If DWR uses any funds provided pursuant to this Revised SMPA for purposes not in accordance with this Revised SMPA or not in compliance with FAR Part 31, Subpart 6, DWR shall reimburse USBR for the amount of any such improperly used funds.
- D. USBR shall submit quarterly statements to DWR for costs incurred pursuant to this Revised SMPA and, DWR shall adjust the DWR quarterly invoices to reflect USBR costs. DWR shall submit its quarterly invoices for payment to USBR for DWR costs

incurred pursuant to this Revised SMPA and adjusted for amounts reflecting USBR costs.

- E. Each year on or before October 1, DWR shall, to the extent possible, provide USBR a proposed three-year Suisun Marsh budget reflecting DWR's estimated annual costs for three years beginning one year after the date of submittal to implement programs and actions under Articles III, IV, V, VI, VII, VIII, and XII of this Revised SMPA. This estimated budget will be used by USBR to estimate future funding requirements for both operation and maintenance and construction costs associated with the Suisun Marsh programs and actions. USBR shall notify DWR by the following September 15th of its full or partial approval of DWR's proposed budget for year one, including any rationale for unapproved costs. USBR's approval shall not be unreasonably withheld. In the event that USBR does not approve DWR's year one budgeted costs, such unapproved costs shall not be eligible for reimbursement by USBR until such time as they are mutually agreed upon by DWR and USBR. DWR and USBR shall coordinate on estimated budgets for years two and three as needed for their respective budget planning purposes.

Article XII. SMPA Coordination Committee and ECAT

- A. Each party to this Revised SMPA shall appoint a representative ("Coordinator") to the SMPA Coordination Committee to review and approve, as necessary, actions and operations undertaken pursuant to this Revised SMPA. To the extent possible, the Coordination Committee shall review and resolve issues and disputes that arise under this Revised SMPA as described in Article XVIII. The Committee shall convene as needed.
- B. Each party to this Revised SMPA shall appoint a representative to the SMPA Environmental Coordination Advisory Team. The ECAT will have responsibility for: (1) ensuring compliance with mitigation and monitoring requirements of this Revised SMPA and related permits and biological opinions, and (2) provide technical guidance and oversight of Suisun Marsh monitoring, management and restoration programs conducted as part of the SMPA, including its monitoring and mitigation agreements.
1. The ECAT will be patterned after DWR's Environmental Coordination Advisory Team and will include participation from other federal and State agencies, such as USFWS and NOAA Fisheries.
 2. The ECAT will report, at least annually, through the four Agency Coordinators to the Agency Directors.
 3. The ECAT's tasks will be to: (1) develop and/or update protocol for SMPA monitoring activities in cooperation with USFWS and other

regulatory agencies, and (2) develop recommendations for use of the last installment of DWR and Reclamation mitigation payments contained in the Suisun Marsh Mitigation Agreement, consistent with Article VI of this Revised SMPA, which shall include activities that mitigate for impacts to listed and sensitive species. ECAT will give high priority to mitigation actions which provide opportunities for multi-species recovery.

Article XIII. Assurances

To assure the effectiveness of the actions implemented and facilities operated pursuant to Articles III, VI, and VII:

- A. SRCD shall diligently exercise its authority to require that Individual Ownerships be managed and operated in accordance with their IOAHMP and so as not to interfere with the implementation of actions and operation of Existing Facilities.
- B. DWR and USBR shall neither be required to meet:
 1. The channel water salinity standards of Article III; nor
 2. The requirements of Subarticle VII.D as it applies to the specifically affected Individual Ownershipsduring any period where the Parties agree that an Individual Ownership, by its acts or omissions, substantially interferes with the operation of any of the actions or Existing Facilities.
- C. Nothing herein shall constitute a waiver of any rights USBR and DWR may have to pursue claims of damage due to failure to maintain the Exterior Levees. If USBR and DWR are unable to meet the Article III standards because the Exterior Levees are in disrepair, USBR and DWR shall not be required to meet the standards to the extent the Exterior Levees are responsible.
- D. DWR and USBR shall make a good faith effort to repair, in an expeditious manner, any facilities or compliance or monitoring stations under DWR control that fail, in order to avoid impacts to management of Marsh wetlands.
- E. The Parties acknowledge that the actions in this Revised SMPA may not provide an equivalent level of protection to the managed wetlands as described in the Original Agreement with regard to channel water salinity objectives at S-35 and S-97. The parties agree to develop an amendment to this Revised SMPA which will contain actions that provide an equivalent or better level of protection as originally described as SMPA Amendment Three, and contained in D-1641 (pages 49-53) for the managed wetlands.

Article XIV. Changes Leading to Renegotiation

The Parties agree if any of the changes listed below occur, then they will renegotiate and amend as necessary this Agreement, consistent with these changes. This Revised SMPA may be amended for other reasons not listed below pursuant to Article XVII.

- A. A regulatory requirement that changes the configuration or operation of the SMSCG causing a significant project modification that makes meeting provisions of Article III infeasible.
- B. Future SWRCB water rights actions reduce requirements for Delta Outflow significantly from the requirements in D-1641.
- C. The salinity values at S-21 and S-42 exceed the Article III Deficiency Standards in Table 1 for more than four months in any two consecutive Control Seasons during a Deficiency Period with the SMSCG fully operating, terms and conditions for Delta outflow of the SWP and CVP water right permits being met, and with Delta outflows occurring as described by the D-1641 Outflow Objectives.
- D. Local inflow into the Marsh is significantly changed which impairs the Parties' ability to meet the objectives of this Revised SMPA.

Article XV. Miscellaneous Provisions

- A. USBR and DWR have no objection to Individual Ownerships diverting water from the Marsh channels for wildlife habitat management on lands within the Marsh. USBR and DWR shall not disturb or challenge said diversions and uses so long as they are consistent with this Revised SMPA while it is in full force and effect.
- B. SRCD and DFG shall not claim any right against USBR or DWR in conflict with the provisions hereof so long as this Revised SMPA remains in full force and effect. However, this provision shall not limit in any way DFG's authority to exercise its responsibilities as a State Trustee agency under California law, including as against USBR or DWR when applicable.
- C. This Revised SMPA shall not affect, bind, prejudice, impair, restrict, or limit water rights pertaining to lands within the Marsh.
- D. SRCD consents to the storage of water and export of water from the Delta by the CVP and SWP so long as this Revised SMPA remains in full force and effect and USBR and DWR are in compliance herewith.

- E. DWR agrees to forego the use of eminent domain proceedings to acquire water rights in the Marsh.
- F. In consideration of Chinook salmon passage issues at the SMSCG and in order to determine appropriate response to such issues and other protected species needs, the Parties agree to continue to implement tests as necessary to determine how to modify the SMSCG structure or operation to minimize fish passage impedance during SMSCG operations.
- G. DFG shall provide SRCD a mutually agreeable location within the Grizzly Island Wildlife Area, DFG headquarters compound, or other location in the Suisun Marsh to permanently place the office trailer identified in the Water Manager Program. DFG shall also provide SRCD a secure location for storage and shall provide shop access for maintenance, repairs to, and service of the pumps in the Portable Pump Program.

Article XVI. Term of the Revised SMPA

This Revised SMPA shall become effective upon execution by the Parties, and execution of the Revised Monitoring Agreement (referenced in Article V) and the Revised Mitigation Agreement (referenced in Article VI) and approval of the California Department of General Services of this Revised SMPA, the Revised Monitoring Agreement and Revised Mitigation Agreement. This Revised SMPA shall remain in full force and effect until terminated by written agreement of all the Parties.

Article XVII. Amendments and Integration of Terms

This Revised SMPA may be amended at any time by mutual written agreement of USBR, DWR, DFG and SRCD and approval by the California Department of General Services. No alterations or variation of the terms of this contract shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated in this Revised SMPA shall be binding on any of the Parties.

Article XVIII. Dispute Resolution and Remedies

- A. Disagreement among the Parties regarding performance under this Revised SMPA shall first be presented to the SMPA Coordination Committee as provided in Article XII, and if unresolved, then be brought before the agency directors and the SRCD Board of Directors for discussion and possible resolution. The Parties agree that an exceedence of a monthly salinity standard of less than 0.2 mS/cm is not sufficient as to require a remedy.

- B. As a condition precedent to a Party or Parties bringing any suit for breach of this Revised SMPA, that Party or Parties must first notify the other Party or Parties in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation 90 days in advance. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the Parties. The Parties involved in the dispute shall each pay an equal proportion of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the Parties from performance pursuant to this Revised SMPA.
- C. Neither DWR nor USBR is responsible for the other's obligation under this Revised SMPA.
- D. The terms of Article XXIII (Release of Liability) shall be interpreted consistent with, and not supplant, the terms of this Article.

Article XIX. Opinions and Determinations

Where the terms of this Revised SMPA provide for action to be based upon the opinion, judgment, approval, review, or determination by the Parties, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

Article XX. Successors and Assigns Obligated

This Revised SMPA and all of its provisions shall apply to and bind the successors and assigns of the Parties hereto. No assignment is valid without the written consent of all the Parties.

Article XXI. Books, Records, Reports and Inspections

Subject to the applicable federal and State laws and regulations, each party shall have the right, for a period of three years after final payment under this Revised SMPA, to examine and make copies of each others books and official records relating to matters covered by this Revised SMPA and to request entry onto property or facilities for inspections.

Article XXII. Waiver of Rights

Waiver at any time by any Party hereto of its rights with respect to a default, or any other matter arising in connection with this Revised SMPA, shall not be deemed to be a waiver with respect to any other default or matter.

Article XXIII. Release of Liability

- A. SRCD, and its agents and employees, in the performance of this Revised SMPA, shall act in an independent capacity and not as officers or employees or agents of the State of California or the federal government.
- B. Disagreements among the Parties regarding performance under this Revised SMPA shall be governed exclusively by Article XVIII.
- C. Each Party shall be responsible for the consequences of its own actions taken in connection with this Revised SMPA, and in connection with any work undertaken in accordance with this Revised SMPA. Within thirty days of receipt by any Party to this Revised SMPA of any third party claim for liability arising from actions or omissions within the scope of this Revised SMPA, the Party receiving the claim shall notify each of the other Parties to this Revised SMPA of such claim and provide a copy of the claim to each of the other Parties to this Revised SMPA, if it is in written form. Nothing in this Article shall be construed to limit the right of any Party to this Revised SMPA to assert such affirmative defenses and file such cross-complaints as may be appropriate in relation to any claim affecting the liability of such Party to this Revised SMPA.

Article XXIV. Notices

All notices that are required either expressly or by implication to be given by one party to another shall be in writing and deemed to be given if delivered personally, by facsimile (FAX), or enclosed in a properly addressed postage prepaid envelope with return receipt requested and deposited in a United State Post Office or by Federal Express or equivalent delivery system. Unless or until formally notified otherwise, notices to the Parties shall be addressed as follows:

Regional Resources Manager
U. S. Bureau of Reclamation, MP-400
2800 Cottage Way
Sacramento, CA 95825-1898

Regional Manager
Department of Fish and Game
Central Coast Region
Yountville, CA 94599

Chief, Division of Environmental Services
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Executive Director
Suisun Resource Conservation
District
2544 Grizzly Island Road
Suisun, CA 94585

Chief, Central Valley Bay-Delta
Branch
Department of Fish and Game
4001 North Wilson Way
Stockton, CA 95205

Article XXV. Contingent Upon Availability of Funds

- A. Forty percent of the total funds to be paid under this Revised SMPA shall be paid using State Water Project funds and twenty percent of the total funds to be paid under this Revised SMPA are contingent on the appropriation of other State funds.
- B. The expenditure or advance of any money and the performance of any work by the United States or the State of California under this Revised SMPA which may require appropriation of money by the Congress or the State Legislature, respectfully, or the allotment of funds shall be contingent upon such appropriation or allotment being made. No liability shall accrue to the United States or the State of California in case such funds are not appropriated or allotted.

Article XXVI. Standard Clauses

The Parties shall comply with the applicable standard clauses in Exhibits C, C1, D, D1, E, and F, however, where a standard clause conflicts or is inconsistent with any provision of this Revised SMPA (also referred to as Exhibit A), the provisions of this Revised SMPA shall control. And, specifically, Conditions 5 and 7 of Exhibit C shall not be applicable as these conditions are inconsistent with Articles XXIII and XVI of this Revised SMPA, respectively.

Article XXVII. Counterparts

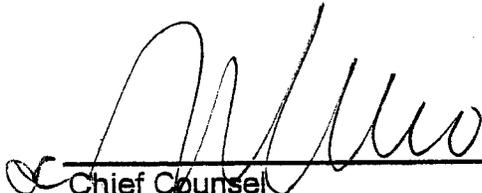
This Agreement may be executed simultaneously or in one or more counterparts, each of which will be an original but all of which together will constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised SMPA (also referred to as Exhibit A) on the date first written above. The terms of this Revised SMPA together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

Approved as to legal form and
sufficiency:



Office of the Regional Solicitor
Department of the Interior

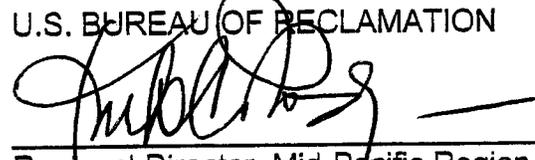


Chief Counsel
Department of Water Resources

Chief Counsel
Department of Fish and Game

Counsel
Suisun Resource Conservation District

U.S. BUREAU OF RECLAMATION



Regional Director, Mid-Pacific Region

MAY 23 2005

Date

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES

Director

Date

DEPARTMENT OF FISH AND GAME

Director

Date

SUISUN RESOURCE CONSERVATION
DISTRICT

President, Board of Directors,

Date

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised SMPA (also referred to as Exhibit A) on the date first written above. The terms of this Revised SMPA together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

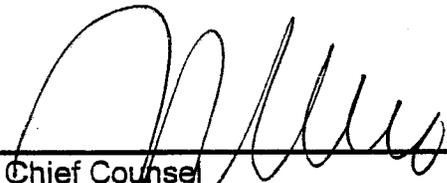
Approved as to legal form and
sufficiency:

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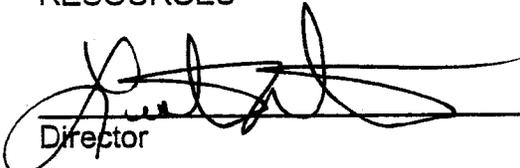
Office of the Regional Solicitor
Department of the Interior

Regional Director, Mid-Pacific Region

Date


cc Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES


Director

Date

Chief Counsel
Department of Fish and Game

DEPARTMENT OF FISH AND GAME


Director

Counsel
Suisun Resource Conservation District

May 17, 2005
Date

SUISUN RESOURCE CONSERVATION
DISTRICT

President, Board of Directors,

Date

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised SMPA (also referred to as Exhibit A) on the date first written above. The terms of this Revised SMPA together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

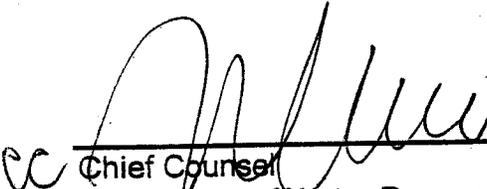
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sufficiency:

U.S. BUREAU OF RECLAMATION

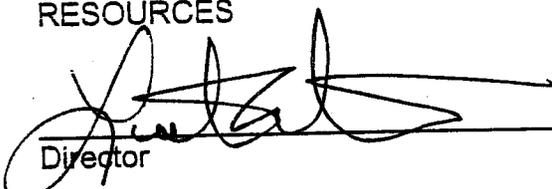
Office of the Regional Solicitor
Department of the Interior

Regional Director, Mid-Pacific Region

Date


Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES


Director

Chief Counsel
Department of Fish and Game

Date

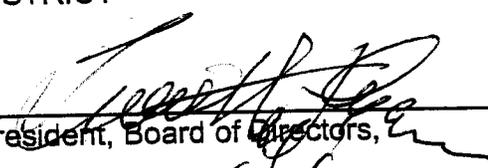
DEPARTMENT OF FISH AND GAME

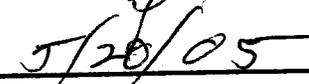

Counsel
Suisun Resource Conservation District

Director

Date

SUISUN RESOURCE CONSERVATION
DISTRICT


President, Board of Directors,


Date

Attachment A
Description of Existing Facilities

I. Roaring River Slough Unit

The Roaring River Slough Unit includes the following:

Intake Facilities – Fish screens, control gates, culverts, tide gates, and the levee and road over the culverts.

Hammond Island Reservoir – 40 acres in the southeast corner of Department of Fish and Game property adjacent to Montezuma Slough and Roaring River. Includes the levees surrounding the reservoir.

Roaring River Channel – Includes the north and south levees, the Mud Slough arm, including its north and south levees, and the crossing structures.

Wheeler Island – Boat ditches, levee and control gates.

Drainage Facility – Control gate and culvert.

Individual ownership water intake and discharge facilities - These facilities include control gated culverts and access thereto.

II. Goodyear Slough Outfall

The Goodyear Slough Outfall includes the following:

Goodyear Ditch – Channel dredged from the end of Goodyear Slough to the Bay.

Drainage Facility – Structure consisting of culverts and control gates.

Trash Rack – Structure at the beginning of Goodyear Ditch to minimize debris entering Goodyear ditch.

III. Morrow Island Distribution System

Intake Structure – Intake culverts, control gates, and the levee and road over the culverts.

Morrow Island Ditch – Includes the north and south levees and the crossing structures.

Drainage facility – Includes the culverts and control gates.

Individual ownership water intake and/or drainage facilities – These facilities include control gated culverts and access thereto.

IV. Suisun Marsh Salinity Control Gates (also known as Montezuma Slough Control Structure

The facility consists of three radial gates, a 20-foot wide boat lock, and a flashboard opening 66 feet wide.

V. Cygnus Unit

A drain facility consisting of a 36-inch culvert and gate on Individual Ownership No. 424.

VI. Lower Joice Island Unit

Fill facility consisting of a 36-inch culvert and gate and connection to the existing distribution system on Individual Ownership No. 424.

RESPONSIBILITY FOR
 SUISUN MARSH FACILITIES AND ACTIVITIES

Item	Environmental Documentation	Design	Construction	Operation	Maintenance	Ownership
Suisun Marsh Salinity Control Gates						
All facilities	DWR	DWR	DWR	DWR	DWR	DWR
Cygnus Unit						
Turnouts	SRCD	DWR ¹	DWR ¹	Landowner	Landowner	Landowner
Roaring River Slough Unit						
Intake structures	DWR	DWR	DWR	DWR	DWR	DWR
Fish Screens	DWR	DWR	DWR	DWR	DWR	DWR
Modified Channel (including pond)	DWR	DWR	DWR	DWR	DWR	DWR
Levees ²	DWR	DWR	DWR	—	DFG/DWR ³	Landowner ⁶
Laterals	DWR	DWR	DWR	—	DWR	DWR
Crossing structures	DWR	DWR	DWR	DWR	DWR	DWR
Turnouts	DWR	DWR ¹	DWR ¹	Landowner	Landowner ⁴	Landowner ⁴
Turnout (Article VII.A.5) repair	SRCD	SRCD	SRCD	Landowner	Landowner	Landowner
Morrow Island Distribution System²						
Intake Structures	DWR	DWR	DWR	—	DWR	DWR
M-Line Outfall	DWR	DWR	DWR	DWR	DWR	DWR
C-Line Outfall	DWR	DWR	DWR	DWR	DWR	DWR
Levees	DWR	DWR	DWR	—	DWR	DWR
Turnouts and drainage facilities	DWR	DWR ¹	DWR ¹	Landowner	Landowner ⁴	Landowner
Goodyear Slough Unit						
Intake structures	DWR	DWR	DWR	DWR	DWR	DWR
Outfall structure	DWR	DWR	DWR	DWR	DWR	DWR
Channel	DWR	DWR	DWR	—	DWR	DWR
Lower Joice Island Unit						
Turnout	SRCD	DWR	DWR	Landowner	Landowner ⁴	Landowner
Connection to existing distribution system	SRCD	DWR	DWR	—	DWR	Landowner
Fish screen	SRCD	DWR	DWR	Landowner	Landowner ⁵	Landowner
Portable Pumps						
	SRCD	SRCD	SRCD	SRCD	SRCD	SRCD
Water Manager Program						
All equipment	SRCD	—	—	SRCD	SRCD	SRCD

1. Specific turnouts and drain gates to be identified on design plans.
2. Main channel water control levees only.
3. DFG as landowner shall be responsible for maintaining the North Levee on Roaring River except for subsidence which prevents the River Unit from meeting its design purposes.
4. DWR and USBR shall correct any deficiency due to design or construction which prevents any water facility from passing its design flow rate until May of the third operating season after the water facility becomes operational. After this period, all necessary corrections shall be the responsibility of the Individual Ownership.
5. DWR and USBR shall correct any deficiency due to design or construction which prevents the fish screen from passing its design flow rate until May of the first operating season after the fish screen becomes operational. After this period, all necessary corrections shall be the responsibility of the Individual Ownership.
6. DWR has an easement on the levee to perform necessary maintenance.

Attachment C
NDOI and PERCENT INFLOW DIVERTED¹

The NDOI and the percent inflow diverted, as described in this footnote, shall be computed daily by the DWR and the USBR using the following formulas (all flows are in cfs):

$$NDOI = DELTA\ INFLOW - NET\ DELTA\ CONSUMPTIVE\ USE - DELTA\ EXPORTS$$

$$PERCENT\ INFLOW\ DIVERTED = (CCF + TPP) \div DELTA\ INFLOW$$

where $DELTA\ INFLOW = SAC + SRTP + YOLO + EAST + MISC + SJR$

- SAC* = Sacramento River at Freeport mean daily flow for the previous day; the 25-hour tidal cycle measurements from 12:00 midnight to 1:00 a.m. may be used instead.
- SRTP* = Sacramento Regional Treatment Plant average daily discharge for the previous week.
- YOLO* = Yolo Bypass mean daily flow for the previous day, which is equal to the flows from the Sacramento Weir, Fremont Weir, Cache Creek at Rumsey, and the South Fork of Putah Creek.
- EAST* = Eastside Streams mean daily flow for the previous day from the Mokelumne River at Woodbridge, Cosumnes River at Michigan Bar, and Calaveras River at Bellota.
- MISC* = Combined mean daily flow for the previous day of Bear Creek, Dry Creek, Stockton Diverting Canal, French Camp Slough, Marsh Creek, and Morrison Creek.
- SJR* = San Joaquin River flow at Vernalis, mean daily flow for the previous day.

where $NET\ DELTA\ CONSUMPTIVE\ USE = GDEPL - PREC$

- GDEPL* = Delta gross channel depletion for the previous day based on water year type using the DWR's latest Delta land use study.²
- PREC* = Real-time Delta precipitation runoff for the previous day estimated from stations within the Delta.

and where $DELTA\ EXPORTS^3 = CCF + TPP + CCC + NBA$

- CCF* = Clifton Court Forebay inflow for the current day.⁴
- TPP* = Tracy Pumping Plant pumping for the current day.
- CCC* = Contra Costa Canal pumping for the current day.
- NBA* = North Bay Aqueduct pumping for the current day.

-
- 1 Not all of the Delta tributary streams are gaged and telemetered. When appropriate, other methods of estimating stream flows, such as correlations with precipitation or runoff from nearby streams, may be used instead.
 - 2 The DWR is currently developing new channel depletion estimates. If these new estimates are not available, DAYFLOW channel depletion estimates shall be used.
 - 3 The term "Delta Exports" is used only to calculate the NDOI. It is not intended to distinguish among the listed diversions with respect to eligibility for protection under the area of origin provisions of the California Water Code.
 - 4 Actual Byron-Bethany Irrigation District withdrawals from Clifton Court Forebay shall be subtracted from Clifton Court Forebay inflow. (Byron-Bethany Irrigation District water use is incorporated into the GDEPL term.)

**Attachment D
 Sacramento Valley
 Water Year Hydrologic Classification**

Year classification shall be determined by computation of the following equation:

$$\text{INDEX} = 0.4 * X + 0.3 * Y + 0.3 * Z$$

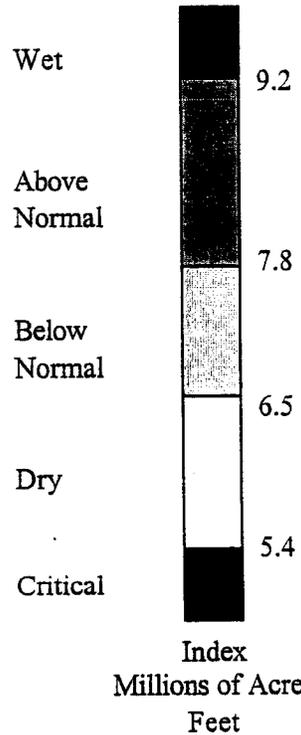
Where: X = Current year's April – July
 Sacramento Valley unimpaired runoff

Y = Current October – March
 Sacramento Valley unimpaired runoff

Z = Previous year's index¹

The Sacramento Valley unimpaired runoff for the current water year (October 1 of the preceding calendar year through September 30 of the current calendar year), as published in California Department of Water Resources Bulletin 120, is a forecast of the sum of the following locations: Sacramento River above Bend Bridge, near Red Bluff; Feather River, total inflow to Oroville Reservoir; Yuba River at Smartville; American River, total inflow to Folsom Reservoir. Preliminary determinations of year classification shall be made in February, March, and April with final determination in May. These preliminary determinations shall be based on hydrologic conditions to date plus forecasts of future runoff assuming normal precipitation for the remainder of the water year.

YEAR TYPE²
 All Years for All Objectives



<u>Classification</u>	<u>Index Millions of Acre-Feet (MAF)</u>
Wet.....	Equal to or greater than 9.2
Above Normal.....	Greater than 7.8 and less than 9.2
Below Normal.....	Equal to or less than 7.8 and greater than 6.5
Dry.....	Equal to or less than 6.5 and greater than 5.4
Critical.....	Equal to or less than 5.4

¹ A cap of 10.0 MAF is put on the previous year's index (Z) to account for required flood control reservoir releases during wet years.

² The year type for the preceding water year will remain in effect until the initial forecast of unimpaired runoff for the current water year is available.

Attachment E. Original Suisun Marsh Preservation Agreement

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SUISUN MARSH PRESERVATION AGREEMENT
Among
United States Bureau of Reclamation,
California Department of Water Resources,
California Department of Fish and Game, and
Suisun Resource Conservation District

THIS AGREEMENT, dated this 2 day of March, 1987, is hereby entered into among the United States Bureau of Reclamation (USBR), California Department of Water Resources (DWR), the California Department of Fish and Game (DFG), and the Suisun Resource Conservation District (SRCD), and supersedes that contract for the Initial Facilities dated December 18, 1978.

R E C I T A L S

(a) In Section 29002 of the Public Resources Code, the California Legislature has found and declared that the Suisun Marsh (Marsh) represents a unique and irreplaceable resource to the people of the State and the Nation and that it is the policy of the State to preserve and protect resources of this nature for the enjoyment of the current and succeeding generations. Further, Section 29003 of the Public Resources code provides that in order to preserve the integrity and assure continued wildlife use of the Marsh, including the preservation of its waterfowl carrying capacity and retention of the diversity of its flora and fauna, there is a need for the following:

(1) Provisions for establishment and maintenance of adequate water quality.

(2) Improvement of present water management practices, including drainage and other water control facilities within the Marsh.

(3) Establishment of criteria for the production of valuable waterfowl food plants.

(4) Provisions for future supplemental water supplies and related facilities to assure that adequate water quality will be achieved within the wetland areas.

These concerns have been recognized in the Plan of Protection (Plan) developed by DWR.

(b) Public Law 99-546 authorizes the USBR to participate in the preservation of the Marsh. The value of preserving wetlands is recognized in Presidential Executive Order 11990 (Protection of Wetlands) dated May 24, 1977.

(c) In Decision 1485 (D-1485) the State Water Resources Control Board (SWRCB) considered the problems of the Marsh and directed the USBR and DWR to develop and implement a plan to protect the Marsh. A Plan of Protection for the Suisun Marsh was furnished to the SWRCB by DWR in February 1984. D-1485 required the Plan's implementation by October 1, 1984. By letter of July 26, 1982, DWR notified SWRCB of its inability to meet that deadline. In the meantime, DWR and USBR are providing partial mitigation through certain Initial Facilities constructed pursuant to Order 7(c) of D-1485 and the contract among SRCD, DFG and DWR dated December 18, 1978. Under a contract between USBR and DWR, dated February 18, 1982, the USBR reimbursed DWR for \$2,500,000 of the federal share of the cost of the Initial Facilities, as authorized by Public Law 96-495.

(d) A supply of adequate quality water is necessary to protect wildlife habitat in the Marsh. The parties consider it to be in the public interest to manage the wetlands of the Marsh to produce adequate quality waterfowl habitat and grow certain waterfowl food plants.

(e) Upstream water use, including diversions by the Central Valley Project (CVP) and the State Water Project (SWP) has, at times, reduced outflow from the Delta, thus increasing salinity in the Marsh. The higher salinities have, at times, degraded waterfowl habitat in the Marsh. The Marsh has a salinity gradient between its western portion and its eastern portion, with ocean-derived salinity being greatest in the westerly portion.

(f) The parties recognize that the water quality provided in this Agreement may, at times, be different than the quality of water which would be available in the Marsh in the absence of the SWP, the CVP, and other diversions by upstream users. Consequently, at times, landowners in the Marsh will need to employ more intensive management practices in the production of desirable waterfowl food plants.

(g) Resource conservation districts are authorized to enter into contracts with the United States and the State in furtherance of their powers.

(h) The SRCD is granted the primary local responsibility by Public Resources Code Section 9962 for regulating and improving water management practices on privately owned lands within the primary management area of the Marsh.

(i) The parties recognize that the benefits and costs of implementing the Plan cannot be determined precisely. The division of responsibilities contained herein is deemed to represent a reasonable balance of equities.

A G R E E M E N T

1. Definitions.

When used herein, the term:

(a) "Become(s) Operational" shall mean the time when a facility constructed pursuant to Article 8 is accepted by DWR with the concurrence of USBR in a formal written acceptance issued to the construction contractor.

(b) "Construction Season" shall mean the period February 1, to October 1.

(c) "Control Station" shall mean a location as listed in Table II.

(d) "Deficiency Period" shall mean (1) a Critical Year following a Dry or Critical Year; or (2) a Dry Year following a year in which the Four Basin Index was less than 11.35; or (3) the second consecutive Dry Year following a Critical Year.

(e) "Delta" shall mean the Sacramento-San Joaquin Delta as it is presently defined in Section 12220 of the Water Code;

(f) "Delta Outflow Index" shall mean an index of Delta outflow computed daily by USBR and DWR, as described on page IV-7 of the "Water Quality Control Plan, Sacramento-San Joaquin Delta and Suisun Marsh", dated August 1978, prepared by SWRCB.

(g) "Electrical Conductivity" (EC) shall mean the electrical conductivity of a water sample measured in millimhos per centimeter (mmhos/cm) corrected to a standard temperature of 25 Celsius determined in accordance with procedures set forth in the publication entitled, "Standard Methods of Examination of Water and Waste Water", published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, 13th Edition, 1971, including such revisions thereof as may be made subsequent to the date of this Agreement which are approved in writing by the parties.

(h) "Exterior Levees" shall mean levees which protect the Marsh against inundation and uncontrolled flooding and are identified in the "Suisun Marsh Levee Evaluation" report dated February, 1983, prepared by Ramlit Associates for the United States Corps of Engineers.

(i) "Four Basin Index" shall mean the sum of the unimpaired runoff in the Water Year as published in California

Department of Water Resources Bulletin 120 for the following locations: Sacramento River above Bend Bridge, near Red Bluff; Feather River, total unimpaired inflow to Oroville Reservoir; Yuba River at Smartville; American River, total unimpaired inflow to Folsom Reservoir.

(j) "Individual Ownership" shall mean separately owned parcels of land in the Marsh, other than those on Roe, Ryer, Freeman, and Snag Islands or the owners thereof. Contiguous parcels owned by the same legal entity comprise a single Individual Ownership.

(k) "Initial Facilities" shall mean the facilities for the Roaring River Slough Unit, the Goodyear Slough Outfall, and the Morrow Island Distribution System constructed pursuant to the contract of December 18, 1978.

(l) "Marsh" shall mean the Suisun Marsh as it is presently defined in Section 29101 of the Public Resources Code.

(m) "Marsh Model" shall mean the computer model consisting of MRSHFLO and MRSHQAL originally developed by Hugo Fischer, Inc. under contract with USBR as modified by USBR and DWR.

(n) "Overall Facilities" shall mean water delivery, distribution, redistribution, intake and drainage facilities as shown in Attachment A, which is made a part of this Agreement. These facilities are described in the Plan. The Initial Facilities are a part of the Overall Facilities.

(o) "Plan of Protection" (Plan) shall mean the plan prepared by DWR dated February, 1984 to mitigate the effects of the CVP and SWP on the Marsh and any subsequent modifications.

(p) "Scheduled Water" shall mean firm supplies of the CVP or SWP, plus such additional water ordered from the SWP by a contractor the previous September which does not exceed the maximum annual entitlement of that contractor.

(q) "Water Year" or "Year" shall mean the period October 1 of any year through September 30 of the following year.

(r) "Wet Year", "Above Normal Year", "Below Normal Year" and "Subnormal Snowmelt Year" are as defined in Footnote 2 of Table II of D-1485 as adopted by the SWRCB in August 1978. "Critical Year" and "Dry Year" are also as defined in Footnote 2 of Table II of D-1485 except that runoff for the remainder of the water year shall be assumed to be equal to the lower value of the 80 percent probability range, as shown in the most recent issue of Bulletin 120, "Water Conditions in California".

2. Obj tives

The objectives of this Agreement are:

(a) To assure that USBR and DWR maintain a dependable water supply of adequate quantity and quality within the Marsh to mitigate the adverse effects on the Marsh of the CVP and SWP and a portion of the adverse effects of the other upstream diversions;

(b) To improve Marsh wildlife habitat to the extent that such improvement is compatible with other CVP and SWP purposes;

(c) To define the scope of the obligations of USBR and DWR to provide the water supply, distribution, redistribution and management facilities necessary to accomplish the objectives in (a) and (b); and

(d) To assure that USBR and DWR recognize that the water users within the Marsh have been diverting and will continue to divert water for wildlife habitat management within the Marsh.

3. Water Quality Standards

The water quality standards to be met under this Agreement are:

(a) Initial Standards;

The standards of this subarticle are to be met only until DFG and SRCD request, based on evaluation of facilities constructed pursuant to Article 8, that the standards specified in subarticles (b) and (c) be put into effect, subject to the provisions of subarticle 8(h). These are:

(i) The 28-day running average of mean daily EC at O&A Ferry Landing on Chipps Island shall not exceed 12.5 mmhos from October through May, except that the comparable EC shall be 15.6 mmhos from October through December in any calendar year when the CVP or the SWP water contractors are taking a deficiency in Scheduled Water.

(ii) The minimum mean monthly Delta Outflow Index during the period January through May shall be 6,600 cfs whenever storage is at or above the minimum level in the flood control reservation envelope at any two of the following: Shasta Reservoir, Oroville Reservoir, and CVP storage on the American River. In addition, in Above Normal and Below Normal Years, the minimum 14-day running average Delta Outflow Index will be 12,000 cfs for 60 consecutive days in the period January through April. In Wet Years the minimum mean monthly Delta Outflow Index

from February thro h May will be 10,000 cfs, except in Subnormal Snowmelt years when the period shall be February through April.

(b) Normal Standards

(i) As each facility constructed pursuant to Article 8 Becomes Operational, and after the Initial Standards are no longer in effect pursuant to (a) above, the standards in Table I shall be met, except during Deficiency Periods, at the Control Stations (Table II and Figure I) listed for each facility as follows:

<u>Facility</u>	<u>Control Stations</u>
Montezuma Slough Control Structure	C-2, S-64 and S-49
Boynton-Cordelia Unit	S-21 and S-97
Cordelia-Goodyear Unit	S-75
Grizzly Island Unit	No additional station
Potrero Hills Unit	S-42

(ii) The Initial Facilities and those facilities constructed pursuant to this Agreement will be operated to minimize water salinities in the Marsh only so far as such operations do not create a need for additional upstream water releases, do not limit exports, do not harm fishery resources, significantly benefit wildlife habitat, and do not require that the Montezuma Slough Control Structure stoplogs remain in place beyond the time otherwise required to meet this Agreement.

TABLE I-^{1/}

MEAN MONTHLY HIGH TIDE^{2/} ELECTRICAL CONDUCTIVITY (mmhos/cm)

<u>Month</u>	<u>Normal Standards</u>
October	19.0
November	16.5
December	15.5
January	12.5
February	8.0
March	8.0
April	11.0
May	11.0

^{1/}The same standards apply at all Control Stations in effect, although it is recognized that better quality water will be present at some Control Stations due to a salinity gradient within the Marsh.

^{2/}The monthly mean of both daily high tide ECs.

TABLE II
CONTROL STATIONS

Sacramento River at Collinsville Road in Collinsville (C-2)^{1/}
Montezuma Slough at National Steel (three miles south of Mein's Landing) (S-64)^{1/}
Montezuma Slough near Beldon Landing (0.35 miles east of Grizzly Island Bridge) [S-49]^{2/}
Suisun Slough 300 feet south of Volanti Slough (S-42)^{1/}
Goodyear Slough south of proposed Goodyear Slough Control Structure [Proposed S-75]^{2/}
Cordelia Slough at Cordelia-Goodyear Ditch [Proposed S-97]^{2/}
Chadbourne Slough at Chadbourne Road [Proposed S-21]^{2/}
Cordelia Slough, 500 feet west of the Southern Pacific crossing at Cygnus (S-33)^{3/}
Goodyear Slough at the Morrow Island Clubhouse (S-35)^{3/}

1/ D-1485 station numbers shown in parentheses.

2/ These stations will be proposed to SWRCB as substitutes for existing D-1485 Control Stations.

3/ Existing D1485 Control Station. To be replaced by alternate station unless retained as provided for in Article 8.

(c) Deficiency Standards

After the Initial Standards are no longer in effect pursuant to (a) above, Table III standards shall be substituted for Table I standards during Deficiency Periods, but other requirements of subdivision (b) above will continue in effect. The designation of a Deficiency Period shall continue until a Year is determined to be other than a Dry or Critical Year.

TABLE III^{1/}MEAN MONTHLY HIGH TIDE^{2/} ELECTRICAL CONDUCTIVITY (mmhos/cm)

<u>Month</u>	<u>Deficiency Standards</u>
October	19.0
November	16.5
December	15.6
January	15.6
February	15.6
March	15.6
April	14.0
May	12.5

1/ The same standards apply at all Control Stations in effect, although it is recognized that better water quality will be present at some Control Stations due to a salinity gradient within the Marsh.

2/ The monthly mean of both daily high tide EC's.

4. Review of Operations

(a) Every fifth year after this Agreement is executed the parties will review the effectiveness of the facilities constructed pursuant to this Agreement. The purpose of the review will be to determine if objectives of this Agreement are being achieved and if any adjustments are needed. During the review, recognized authorities such as U. C. Extension Service and U. S. Salinity Laboratory shall be asked to comment. Information on the relationships among water salinity, soil water salinity, and plant salinity tolerance gained from the Marsh monitoring program shall be considered during the review.

(b) Any necessary adjustments will be made by amending this Agreement.

5. Monitoring

DWR and DFG will monitor and report on surface water and soil water qualities, water elevations, marsh vegetation and wildlife species in accordance with the agreement among DWR, DFG, and USBR to provide for monitoring in the Marsh dated March 2, 1987 (monitoring agreement) or as it may be amended. Monitoring data will be available for inspection by SRCD.

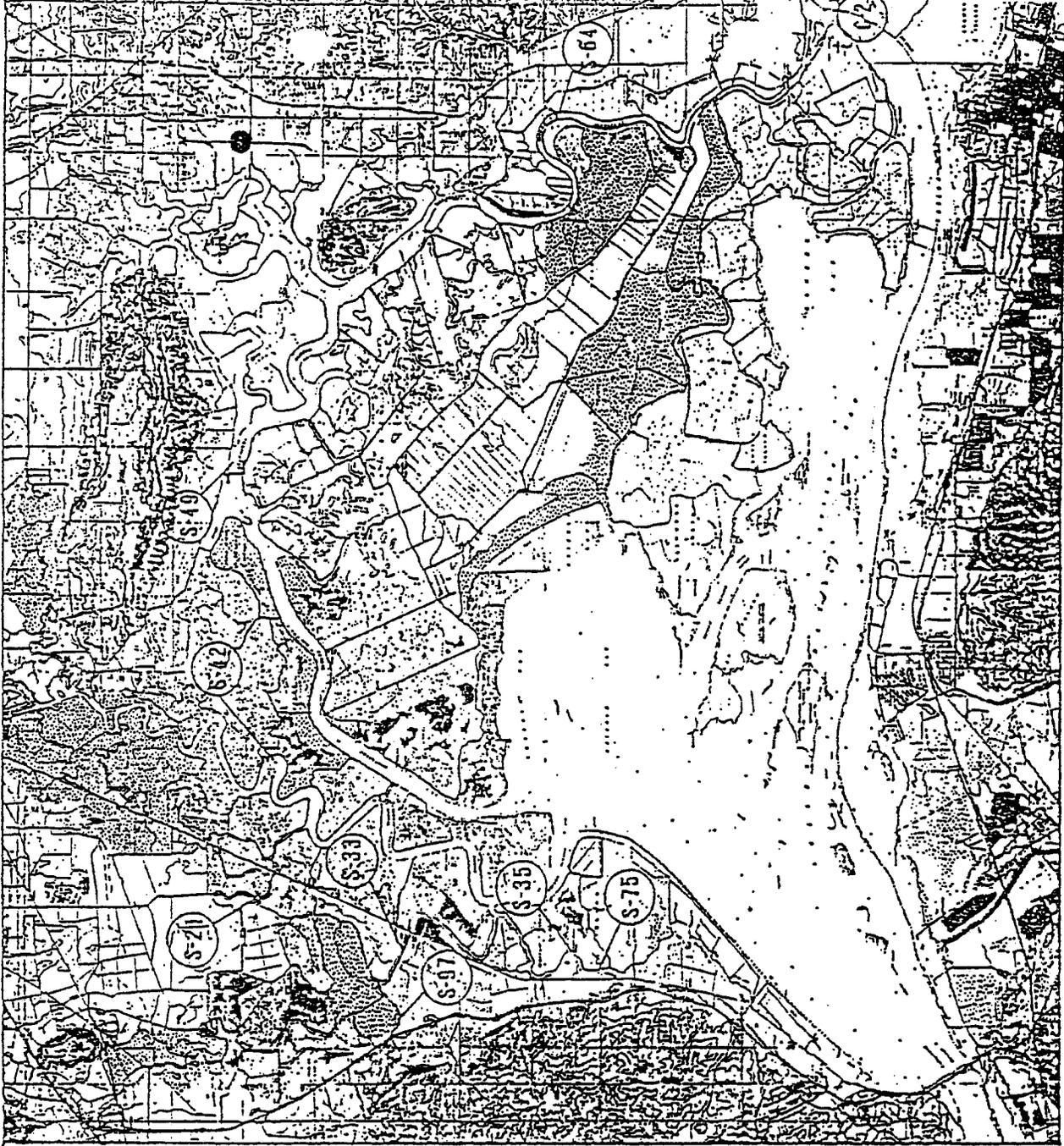


FIGURE 1

SUISUN MARSH

CONTROL STATION LOCATIONS

- C-2 SACRAMENTO RIVER AT COLLINSVILLE
- S-21 CHADBOURNE SLOUGH AT CHADBOURNE ROAD
- S-33 CORDELIA SLOUGH 500 FEET WEST OF SPR
- S-36 GOODYEAR SLOUGH AT MORROW ISLAND CLUBHOUSE
- S-42 SUISUN SLOUGH 300 FEET SOUTH OF VOLANTI SLOUGH
- S-49 MONTEZUMA SLOUGH NEAR BELDON LANDING-0.36 MILES EAST OF GRIZZLY ISLAND BRIDGE
- S-64 MONTEZUMA SLOUGH THREE MILES SOUTH OF MEN'S LANDING
- S-75 GOODYEAR SLOUGH SOUTH OF CONTROL STRUCTURE
- S-87 CORDELIA SLOUGH AT CORDELIA-GOODYEAR DITCH

NOTE: THIS MAP FOR REFERENCE ONLY.
THE SPECIFIC LOCATIONS ARE AS DESCRIBED IN TABLE 1 OF ARTICLE 9(b).

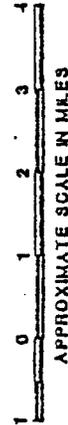


Figure 1

6. Mitigation

USBR and DWR shall provide wetlands mitigation in accordance with the agreement among DWR, DFG, and USBR to provide waterfowl habitat in the Suisun Marsh dated March 2, 1987 for:

(1) the impacts on wetland habitat resulting from construction required under this Agreement, and

(2) adverse effects on Roe, Ryer, Snag, and Freeman Islands resulting from upstream water diversions.

7. Individual Ownership Facilities

(a) USBR and DWR will reimburse each Individual Ownership through SRCD fifty (50) percent of the initial cost of purchasing and installing any water intake and discharge facilities, other than those provided for in I through XI of Attachment A, necessary to enable the Individual Ownership to flood and drain its property within 30 days where such operation is necessary to achieve adequate levels of waterfowl food production as determined by DFG. It is recognized that water intake and discharge facilities on an Individual Ownership may supply water to or drain water from other Individual Ownerships. The total reimbursement obligation of USBR and DWR under this Article shall be limited to the amount specified in subarticle (c) and shall only be used for those water intake and discharge gates, culverts, flashboard risers, and pumps identified in the engineering level Individual Ownership Management Program developed for the property by SRCD, approved by DFG, and certified by the San Francisco Bay Conservation and Development Commission (BCDC).

(b) Prior to reimbursement pursuant to subarticle (a) the Individual Ownership shall first enter into an agreement with USBR, DWR, and SRCD which shall provide that the Individual Ownership will either follow the "needed practices" identified in its Individual Ownership Management Program or will repay with interest the funds provided by USBR and DWR.

(c) The obligation of USBR and DWR under this Article shall not exceed \$995,000 (July 1, 1985 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in construction costs, as indicated by the "Engineering News-Record's" cost indexes), shared in accordance with Article 12. USBR and DWR obligations under this Article shall terminate four years after the Montezuma Slough Control Structure Becomes Operational, or four years after the execution of this Agreement, whichever is later.

8. Construction and Operation of Facilities

(a) DWR shall construct the Montezuma Slough Control Structure, the Cygnus Unit, the Lower Joice Island Unit and the Annie Mason Island Unit by the end of the 1988 Construction Season provided that the work on Annie Mason Island shall not begin until the Exterior Levees of the Island are intact, which may delay completion of that unit until after 1988.

(b) When the Montezuma Slough Control Structure Becomes Operational, USBR and DWR shall test and evaluate its effectiveness in meeting the standards of subarticles 3(b) and (c), and decide which additional facilities are needed to meet those standards. Not later than three years after the Montezuma Slough Control Structure Becomes Operational:

(i) either Station S-33 will be substituted for Station S-97 in subarticle 3(b)(i) and DWR and USBR shall meet the standards in subarticle 3(b) and (c) at Stations S-21 and S-33, or DWR shall construct the Boynton-Cordelia Unit, or an alternate facility, and DWR and USBR shall meet the standards of subarticles 3(b) and (c) at Stations S-21 and S-97 not later than the end of the fifth full construction season after the Montezuma Slough Control Structure Becomes Operational; and

(ii) either DWR and USBR shall meet the standards in subarticle 3(b) and (c) at Station S-35, with that station being substituted for Station S-75 in Article 3(b)(i), or DWR shall construct the Cordelia-Goodyear Unit, or an alternate facility, and DWR and USBR shall meet the standards of subarticle 3(b) and (c) at Station S-75 not later than the end of the sixth full construction season after Montezuma Slough Control Structure Becomes Operational.

(c) USBR and DWR shall evaluate the need for the Grizzly Island Unit or an alternate facility to supply water meeting the standards of subarticles 3(b) and (c) to the area to be served by the Grizzly Island Unit. If the Grizzly Island Unit or an alternate facility is needed, DWR shall construct it in accordance with one of the following schedules:

(i) By the end of the seventh full Construction Season after the Montezuma Slough Control Structure Becomes Operational, if both the Boynton-Cordelia and Cordelia-Goodyear Units or alternate facilities are constructed; or

(ii) By the end of the sixth full Construction Season after the Montezuma Slough Control Structure Becomes Operational, if either the Boynton-Cordelia Unit or the Cordelia-Goodyear Unit or alternate facilities are not constructed.

(d) After the facility provided for in Subarticle (c) Becomes Operational or has been determined to not

be needed, USBR and DWR shall evaluate their ability to meet the standards of subarticle 3(b) and (c) at Station S-42 with the existing facilities. If USBR and DWR, based on the results of that evaluation, determine that further construction is unnecessary then they shall meet the standards in subarticles 3(b) and (c) at Control Station S-42 not later than three years from the date the facility provided for in subarticle (c) Becomes Operational or has been determined to not be needed. However, if they determine from that evaluation that the Potrero Hills Unit is needed, they shall complete construction of that unit or an alternate facility by the end of the fifth full Construction Season from the date the facility provided for in subarticle (c) Becomes Operational.

(e) Preliminary plans and specifications shall be furnished to USBR, SRCD, and DFG for review and comments. USBR and DWR shall consider the comments if received within thirty working days of the date the preliminary plans and specifications are furnished for review. Responses to comments will be provided on request of the parties. After comments and revisions have been considered, the plans and specifications shall be submitted to USBR for approval. The approval process shall be completed within 30 working days of the time DWR submits the plans to USBR for approval. All facilities shall be constructed substantially in accordance with the plans and specifications jointly approved by USBR and DWR.

SRCD, DFG, and the Individual Ownerships will incur no liability for the adequacy or suitability of any design as depicted in the preliminary plans and specifications by providing comments. Right-of-way agreements with Individual Ownerships will describe those design features which will be owned and operated by the Individual Ownership concerned.

(f) Before a facility Becomes Operational, it shall be operated to meet the applicable standards in subarticles 3(b) and (c) insofar as reasonably possible.

(g) The parties agree that if the facilities constructed pursuant to this Article do not provide the applicable water quality as specified in subarticles 3(b) and (c) due to inadequate design or construction, then USBR and DWR shall promptly modify the appropriate facility as necessary in accordance with subarticle 8(e). Pending completion of the modifications, USBR and DWR shall be relieved of the responsibility for meeting any standards dependent on the defective facility. To the extent possible, the defective facility will be operated to meet the objectives of this Agreement. Isolated minor incidents of failure to meet the applicable standards shall not be construed as requiring modification of a facility.

(h) The parties agree that if either the Marsh Model predictions or the Delta outflow/salinity relationships upon which this Agreement is based are substantially in error, they will renegotiate this Agreement. Pending renegotiation: (1) no

further facilities will be constructed; (2) the standards in effect prior to construction of the last facility will be met; and (3) the last facility will be operated to meet the standards provided for in this Agreement insofar as reasonably possible.

(i) If an Individual Ownership is unable to flood and drain within a thirty-day period due to either the design, construction, or operation of the Initial Facilities or facilities constructed pursuant to this Article, and, if the 30-day flood and drain capacity is necessary for that Individual Ownership to achieve adequate levels of waterfowl food production, as determined by DFG, then USBR and DWR shall modify the facilities or their operation as is necessary in accordance with subarticle 8(e).

(j) When the Montezuma Slough Control Structure Becomes Operational, USBR and DWR shall monitor and evaluate the quality of the water supply for Van Sickle and Chipps Island as measured at the O&A Ferry Landing on Chipps Island, or its equivalent.

DWR and USBR shall design, construct, and operate facilities, in accordance with subarticle 8(e), to provide water of the required quality, if either:

(i) the monitoring indicates that the EC of the water supply for either or both of the islands has actually exceeded the applicable standards in subarticles 3(b) and (c) for any four months in any two consecutive years, or

(ii) the evaluation projects that the EC of the water supply for either or both of the islands will exceed the applicable standards in subarticles 3(b) and (c) by more than ten percent for any four months in any two consecutive years.

If the evaluation indicates facilities will not be needed, the parties shall reassess the evaluation during each Review of Operation provided for in Article 4.

If facilities are determined to be needed, the scheduling of construction of these facilities shall be through consultation with SRCD and DFG.

(k) The responsibility for operation and maintenance of facilities shall be as listed in Attachment B which is made a part of this Agreement. DWR is shown as acting as the lead agency in Attachment B. However, USBR and DWR share responsibility for funding in accordance with Article 12.

9. Public Access

Lands owned or to be acquired in fee title by the State which are used for the construction or maintenance of the Overall Facilities may be accessible to the public for recreation use. With the exception of lands under DFG management, USBR and

DWR shall mutually determine after consultation with DFG and SRCD the extent to which such lands should be used for recreation consistent with safety, operational needs and potential damage to other lands.

10. Rights of Way

Where rights of way are required for work to be done under this Agreement, SRCD will exercise its best efforts to assure that the necessary easements and/or other appropriate title for each facility are granted. Delay in acquisition may delay completion of a facility within the time requirements provided for in Article 8 but shall not change the responsibility to complete that facility as expeditiously as possible.

11. Assurances

To assure the effective utilization of the water to be provided:

(a) SRCD shall diligently exercise its authority to require that Individual Ownerships be managed and operated in accordance with their Individual Ownership Management Programs, and so as not to interfere with the operation of the Overall Facilities.

(b) If the parties agree that an Individual Ownership by its acts or omissions interferes with the operation of any of the Overall Facilities and as a result the provisions of Article 3 cannot be met, then during the period of the Individual Ownership's interference, DWR and USBR shall neither be required to meet:

(i) the water quality standards which are affected by that interference; nor

(ii) the requirements of Subarticle 8(i) as it applies to the specifically affected Individual Ownerships.

(c) SRCD shall facilitate the formation of levee maintenance districts necessary to protect the facilities constructed pursuant to this Agreement. If USBR and DWR are unable to meet the standards because the Exterior Levees are in disrepair, USBR and DWR shall not be required to meet the standards to the extent the Exterior Levees are responsible.

(d) Nothing herein shall constitute a waiver of any rights USBR and DWR may have to pursue claims of damage due to failure to maintain the Exterior Levees.

12. Cost Sharing

(a) USBR shall pay Forty Percent (40%) and DWR shall pay Sixty Percent (60%) of the costs assigned to DWR and

USBR pursuant to Articles 5, 6, 7 and 8, whether incurred prior to the date of this Agreement or thereafter. The term "costs" shall include costs of planning, design, construction, operation, maintenance, and recreation. The term "costs" shall also include all administrative overhead, costs of liability insurance or pooling programs and other costs similar to those normally incurred by USBR which will be incurred by DWR in performance of the obligations under this Agreement.

(b) Specifically concerning design, planning, and construction costs, it is further agreed that USBR's share of these costs shall not exceed \$50 million, July 1985 dollars, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in construction costs, as indicated by the "Engineering News-Record's" cost indexes.

(c) The United States shall pay to DWR the costs determined to be allowable by the Contracting Officer in accordance with the terms of this Agreement and with provisions of Federal Acquisition Regulations (FAR), Part 31, Subpart 6, 48 CFR Sections 31.601-31.603. If DWR uses any funds advanced pursuant to this Agreement for purposes not in accordance with this Agreement or not in compliance with FAR Part 31, Subpart 6, DWR shall reimburse USBR for the amount of any such improperly used funds.

(i) The USBR's share of costs incurred by DWR prior to the date of this Agreement plus the interest from the dates such costs were incurred, at the State Surplus Money Investment Fund rates, shall be paid to DWR in a lump sum payment following an audit of such costs by an authorized representative of the USBR, to be completed within six months after the execution of this Agreement.

(ii) On or before the first day of each month, after the date of this Agreement, USBR shall advance its contributions specified in this Article, in accordance with a billing statement furnished by DWR regarding expenditures estimated to be incurred during the month. Adjustments for overpayments or underpayments during a quarter shall be made in the quarter immediately following. Advances will be maintained at a level commensurate with current needs.

(d) Each year on or before September 15, DWR shall furnish to USBR a proposed budget of the estimated costs by quarter to be incurred under Articles 5, 6, 7 and 8 of this Agreement during the fiscal year beginning a year later on October 1, and the respective contributions of the parties. USBR shall notify DWR by the following September 15 of its full or partial approval of DWR's proposed budget. USBR's approval shall not be unreasonably withheld. In the event that USBR does not approve all budgeted costs, such unapproved costs shall not be eligible for reimbursement by USBR until such time as they are mutually

agreed upon by DWR and USBR. To facilitate USBR's review, each year's proposed budget should:

(i) include a schedule by physical feature or descriptive title of estimated operation and maintenance costs, supplemented with a narrative description which adequately describes and explains all major aspects of the fiscal year's proposed O&M program; and

(ii) include a schedule of estimated construction costs identifying major structures, facilities and related activities of the fiscal year's proposed construction program.

(e) Separate cost accounts shall be maintained by physical feature or descriptive title to permit ready audit.

13. Miscellaneous Provisions

(a) USBR and DWR have no objection to Individual Ownerships diverting water from the Marsh channels for wildlife habitat management on lands within the Marsh. USBR and DWR shall not disturb or challenge said diversions and uses so long as they are consistent with this Agreement while it is in full force and effect.

(b) SRCD and DFG shall not claim any right against USBR or DWR in conflict with the provisions hereof so long as this Agreement remains in full force and effect.

(c) This Agreement shall not affect, bind, prejudice, impair, restrict, or limit water rights pertaining to lands within the Marsh.

(d) SRCD consents to the storage of water and export of water from the Delta by the CVP and SWP so long as this Agreement remains in full force and effect and USBR and DWR are in compliance herewith.

(e) The parties agree to defend as reasonable and beneficial the water qualities established in this Agreement.

(f) DWR agrees to forego the use of eminent domain proceedings to acquire water rights in the Marsh.

14. SWRCB Approval

After this Agreement is executed by all the parties, they shall jointly petition the SWRCB to find that:

(a) DWR and USBR are taking appropriate action to mitigate the impacts of the CVP and SWP on the Marsh; and

(b) the Agreement is to be substituted for the Marsh standards in the CVP and SWP water rights permits.

15. Sharing of Water

When appropriate, the criteria identified in Article 6 of the "Agreement Between the United States and the California Department of Water Resources for the Coordinated Operation of the Federal Central Valley Project, and California State Water Project" (COA), dated November 24, 1986 shall be amended in accordance with the provisions of Article 14 of the COA to reflect the provisions of this Agreement.

16. Term of Agreement

This Agreement and any amendments hereto shall continue in full force and effect until terminated by the written agreement of all the parties.

17. Amendments

This Agreement may be amended at any time by mutual agreement of USBR, DWR, DFG and SRCD.

18. Remedies

Neither DWR nor USBR is responsible for the other's obligation under this Agreement.

19. Opinions and Determinations

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination by the parties, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

20. Successors and Assigns Obligated

This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

21. Books, Records, Reports and Inspections

Subject to the applicable Federal and State laws and regulations, each party shall have the right to examine and make copies of each others books and official records relating to matters covered by this Agreement.

22. Waiver of Rights

Waiver at any time by any party hereto of its rights with respect to a default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other default or matter.

23. Notices

All notices that are required either expressly or by implication to be given by one party to another shall be deemed to be given if delivered personally, or if enclosed in a properly addressed certified postage prepaid envelope with return receipt requested deposited in a United State Post Office. Unless or until formally notified otherwise, notices to the parties shall be addressed as follows:

Regional Director,
U. S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Director, Department of Water Resources
P. O. Box 388
Sacramento, CA 95802

Director, Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Manager, Suisun Resource Conservation District
P. O. Box 426
Suisun, CA 94585

24. Contingent Upon Availability of Funds

(a) Twenty percent of the funds to be expended for design and construction pursuant to Articles 5, 6, 7 and 8 shall be contingent on the appropriation of funds by the State Legislature for such purposes.

(b) The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

William L. Henson
Regional Director, Mid-Pacific Region
United States Bureau of Reclamation

Date 3/2/87

David L. Jensen
Director, Department of Water Resources

Date: 3/2/87

Don D. Dorell
Director, Department of Fish and Game

Date: 3/2/87

D. William Poon
Suisun Resource Conservation District

Date: 3/2/87

I hereby certify that all conditions for exemption set forth in State Administrative Manual Section 1209 have been complied with and this document is exempt from review by the Department of Finance.

Guy Bennett
Signature

FORM	POLICY	BUDGET
Department of General Services		
APPROVED		
<i>E. Yost</i>		
AUG 7/8 1987		
By	ELIZABETH YOST Chief Deputy Director	

Approved as to legal form and sufficiency:

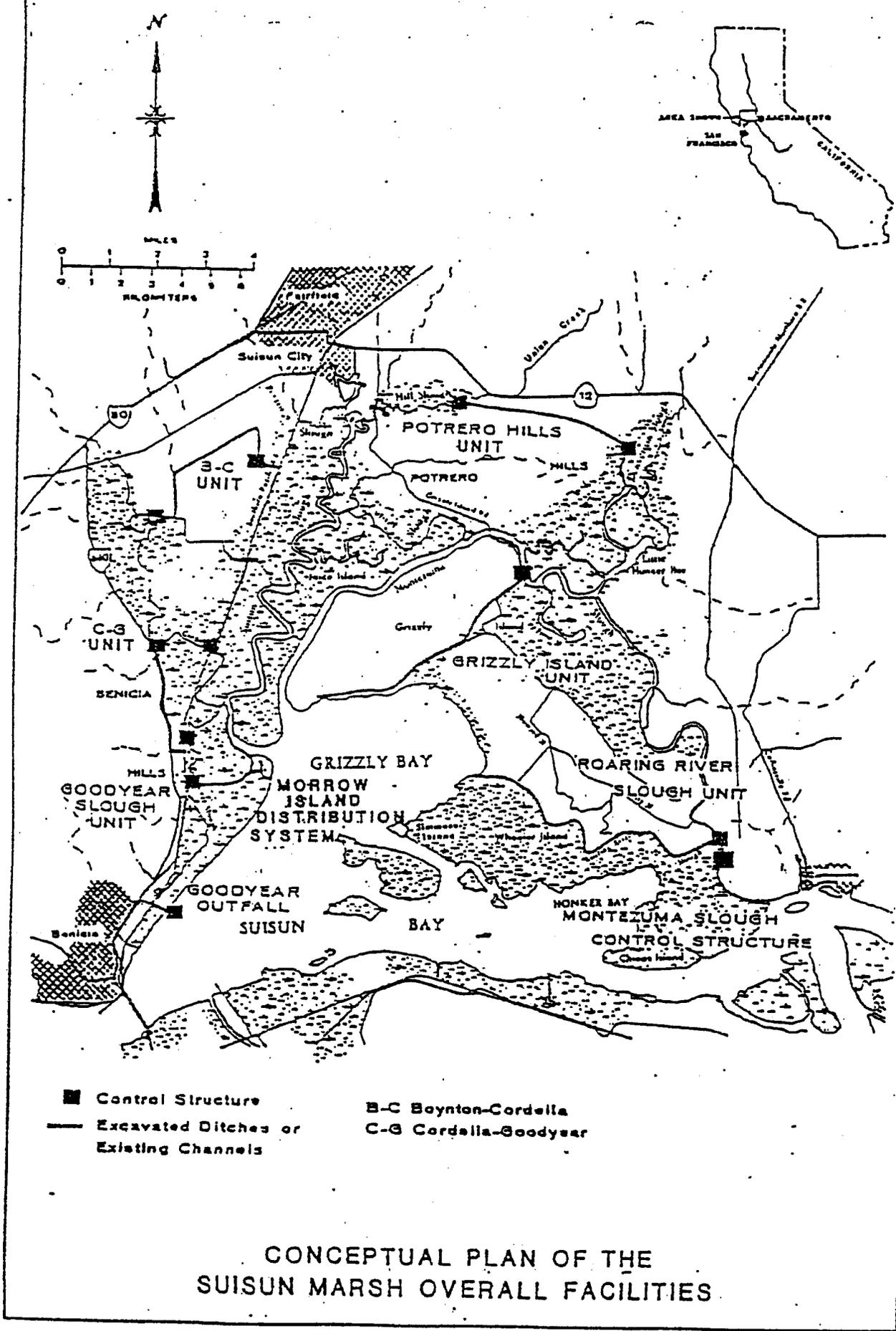
S. Weber
Asst. Chief Counsel, Civil

AUG 10 1987 101

SEP 25 1987 151

SEP 1987

ATTACHMENT A



CONCEPTUAL PLAN OF THE
SUISUN MARSH OVERALL FACILITIES

OVERALL FACILITIES

I.

Roaring River Slough Unit (Constructed)

- A. Intake Facilities, including fish screens, control gates, culverts, tide gates, and the levee and road over the culverts.
- B. Hammond Island Reservoir, 40 acres in the southeast corner of DF&G property adjacent to Montezuma Slough and Roaring River and the levees surrounding the reservoir.
- C. Roaring River channel, including its north and south levees, the Mud Slough arm, including its north and south levees, and the crossing structures.
- D. Wheeler Island boat ditches, levee and control gates.
- E. Individual Ownership water intake and discharge facilities. These facilities include control gated culverts and access thereto.
- F. A drainage facility, consisting of a control gated culvert.

II.

Goodyear Slough Unit (Constructed)

- A. Goodyear Slough Outfall, including a structure consisting of culverts with control gates discharging to a channel dredged from Goodyear Slough to the Bay.
- B. Morrow Island Distribution System, including an intake structure consisting of a levee with control gated culverts through it, a ditch with levees on both sides, outlet structures consisting of levees with control gated culverts through them and access thereto.
- C. Individual Ownership water intake facilities. These facilities include control gated culverts and access thereto.
- D. The drainage facilities from the certain Individual Ownerships. These facilities include control gated culverts and access thereto.
- E. The pond levee with flow controlled culverts north of Morrow Island Ditch.

III.

Montezuma Slough Control Structure

A. Three radial gates, a boat lock 20 feet wide, and a flashboard opening 66 feet wide.

IV.

Grizzly Island Unit

A. Intake Facilities, including fish screens, control gates, culverts, tide gates and the levee and road over the culverts.

B. Reservoir, 120 acres regulating reservoir.

C. Grizzly Island channel, including its north and south levees.

D. Lateral water supply ditches, including their east and west levees.

E. Individual Ownership water intake and discharge facilities. These facilities include control gated culvert(s) and access thereto.

V.

Potrero Hills Unit

A. Intake and outlet facilities, including control gates, culverts, the levee and road over the culverts.

B. Potrero Hills channel, including its north and south levees and the crossing structures.

C. Ponds, two 15 acre ponds.

D. Necessary dredging in Luco and Hill Sloughs.

VI.

Cordelia-Goodyear Unit Ditch

A. Intake and outlet facilities, including control structures, control gates, culverts, tide gates, and the levees and road over the culverts.

B. Cordelia-Goodyear channel, including its east and west levees and crossing structures.

C. Pond, one 20 acre pond.

D. Provision to handle storm runoff from the existing highway culverts.

E. Individual Ownership intake and discharge facilities. These facilities include control gated culvert(s) and access thereto.

F. Goodyear Slough Control Structure, including control gates and the levee and road over structure.

VII. Cygnus Unit

A. Drain facility consisting of 36-inch culvert, gate and flashboard riser on Individual Ownership No. 415.

VIII. Boynton-Cordelia Ditch Unit

A. Intake and outlet facilities, connection from Fairfield Suisun Sanitary District treatment plant.

B. Boynton Cordelia channel, including north and south levees, Chadbourne Road crossing structure and two siphons.

C. Necessary dredging in Boynton Slough relocation of Reclamation Ditch, provision of facility to handle sheet runoff.

IX. Lower Joice Island Unit

A. Fill facility consisting of 36-inch culvert and gate on Individual Ownership No. 424.

B. Connection to existing distribution system on Individual Ownership No. 424.

X. Annie Mason Island Unit

A. Installation of a diesel powered pump on Individual Ownership No. 801.

B. Connection to existing distribution system on Individual Ownership No. 801.

XI. Van Sickle/Chipps Island Unit (to be constructed when and if needed).

XII. Individual Ownership Facilities

A. Individual Ownership water management facilities as provided for in Article 7 of the Agreement.

ATTACHEMENT B

RESPONSIBILITY FOR
SUISUN MARSH PLAN OF PROTECTION FACILITIES

<u>Item</u>	<u>Design</u>	<u>Construction</u>	<u>Operate</u>	<u>Maintain</u>
<u>Montezuma Slough</u>				
<u>Control Structure</u>				
All facilities	DWR	DWR	DWR	DWR
<u>Grizzly Island Unit</u>				
Intake structure	DWR	DWR	DWR	DWR
Fish screens	DWR	DWR	DWR	DWR
Ditch (including pond)	DWR	DWR	--	DWR
Laterals	DWR	DWR	--	DWR
Levees <u>2/</u>	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	--	DWR/County <u>6/</u>
Turnouts	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner <u>4/</u>
<u>Potrero Hills Unit</u>				
Intake and outlet structures including dredging in Luco and Hill Sloughs	DWR	DWR	DWR	DWR
Ditch	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	--	DWR/County <u>6/</u>
<u>Cordelia-Goodyear Unit</u>				
Intake and outlet structures	DWR	DWR	DWR	DWR
Ditch (including ponds)	DWR	DWR	--	DWR
Laterals	DWR	DWR	--	DWR
Levees	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	--	DWR/County <u>6/</u>
Turnouts	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner <u>4/</u>
Goodyear Slough				
Control Structure	DWR	DWR	DWR	DWR
<u>Boynton-Cordelia Unit <u>5/</u></u>				
Intake and outlet structures	DWR	DWR	DWR	DWR
Ditch	DWR	DWR	--	DWR
Levees	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	--	DWR

<u>Item</u>	<u>Design</u>	<u>Construction</u>	<u>Operate</u>	<u>Maintain</u>
<u>Cygnus Unit</u> Turnouts	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner
<u>Roaring River Unit</u> Intake structures	DWR	DWR	DWR	DWR
Fish screens	DWR	DWR	DWR	DWR
Modified Channel (including pond)				
Levees <u>2/</u>	DWR	DWR	--	DFG/DWR <u>3/</u>
Laterals	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	DWR	DWR
Turnouts	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner <u>4/</u>
<u>Goodyear Slough Unit</u> Intake structure	DWR	DWR	DWR	DWR
Outfall structure	DWR	DWR	DWR	DWR
Channel	DWR	DWR	--	DWR
Morrow Island Dis- tribution System <u>2/</u>	DWR	DWR	--	DWR
Turnouts and drainage facilities	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner <u>4/</u>
<u>Lower Joice Island Unit</u> Turnout	DWR	DWR	Landowner	Landowner <u>4/</u>
Connection to the existing distri- bution system	DWR	DWR	--	DWR
<u>Annie Mason Island Unit</u> Pump	DWR	DWR	Landowner	DWR
Connection to the existing distri- bution system	DWR	DWR	--	DWR
<u>Van Sickle/Chipps Island Unit</u>	To be determined if constructed			

- 1/ Specific turnout and drain gates to be identified on design plans.
- 2/ Main channel water control levees only.
- 3/ DFG shall be responsible for maintaining the North Levee on Roaring River except for subsidence which prevents the Roaring River Unit from meeting its design purposes.
- 4/ DWR and USBR shall correct any deficiency due to design or construction which prevents any water facility from passing its design flow rate until May of the third operating season after the water facility becomes operational. After this period, all necessary corrections shall be the responsibility of the landowner of the Individual Ownership.
- 5/ An outfall is to be constructed to the Boynton-Cordelia pond from its treatment plant by Fairfield-Suisun Sanitary District (FSSD) at its expense.
- 6/ To be determined by separate agreement.

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE SUISUN RESOURCE CONSERVATION DISTRICT

WHEREAS, the Suisun Resource Conservation District (District) has participated in negotiations which have led to a contractual agreement among the District, the State Departments of Fish and Game and Water Resources, and the U.S. Bureau of Reclamation; and

WHEREAS, the overall goal of this agreement is to provide improved water quality and wildlife habitat in the Suisun Marsh; and

WHEREAS, Dr. William Coon, past President of the District, has been instrumental in seeking ways to achieve this goal since the inception of the District in 1963;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Suisun Resource Conservation District authorizes Dr. William Coon to sign the four agency contract on behalf of the District.

The foregoing resolution was passed unanimously by the Board of Directors of the Suisun Resource Conservation District this 5th day of November, 1986. Effective November 5, 1986.



Gail Presley, Secretary

CONTRACT TRANSMITTAL AND PRE-EVALUATION
 STD 15 (REV. 2/86)

DEPARTMENT TRANSMITTING CONTRACT
 Water Resources
 DIVISION, BUREAU, OR OTHER UNIT
 Central District
 DATE 3/2/87
 CONTRACT NUMBER B-56323

AGENCY BILLING CODE 81000

ITEMS 1 THROUGH 11 ON THE FRONT SIDE OF THIS FORM MUST BE COMPLETED FOR EVERY CONTRACT, REGARDLESS OF CONTRACT AMOUNT. WHETHER THE CONTRACT MUST BE SUBMITTED TO THE DEPARTMENT OF GENERAL SERVICES FOR REVIEW. IN ADDITION, ITEMS 1 THROUGH 6 ON THE REVERSE SIDE MUST BE COMPLETED FOR ALL CONTRACTS FOR SERVICES. A COPY OF THE COMPLETED FORM MUST ACCOMPANY EACH CONTRACT SUBMITTED TO GENERAL SERVICES FOR REVIEW. A COPY OF THE COMPLETED FORM MUST BE RETAINED IN AGENCY FILES FOR 3 YEARS FROM DATE CONTRACT WAS EXECUTED.

1. NAME OF CONTRACTOR
 U.S. Bureau of Reclamation, Department of Fish and Game, Department of Water Resources, Suisun Resource Conservation District

2. CONTRACTOR I.D. NUMBER (IF REQUIRED BY S.A.M. SECTION 1248)
 NA

3. DIGEST OF CONTRACT (WORK TO BE PERFORMED, AMOUNT TO BE PAID, TERM). INCLUDE ANY SPECIAL OR UNUSUAL TERMS AND CONDITIONS
 See Attached

4. REASON FOR CONTRACT (IDENTIFY SPECIFIC PROBLEM, ADMINISTRATIVE REQUIREMENT, PROGRAM NEED OR OTHER CIRCUMSTANCE MAKING THE CONTRACT NECESSARY)
 To assure that a dependable water supply is maintained to mitigate adverse effects on the Marsh of the Central Valley Project and State Water Project and a portion of the adverse effects of other upstream diversions. Also see B-56321 and B-56322

5. IS THIS A RENEWAL OF A PREVIOUS CONTRACT OR SERVICE? YES NO

6. SUMMARY OF BIDS: A. LIST BIDDERS AND AMOUNTS BID
 B. EXPLAIN:
 1. AWARD OF CONTRACT IF TO OTHER THAN LOW BIDDER NA Interagency Agreement
 2. IF SOLE SOURCE WHAT IS JUSTIFICATION?
 3. IF ONLY ONE BID WAS RECEIVED OR SOLE SOURCE, BASIS FOR CONCLUDING REASONABLENESS OF CONTRACT RATE OR PRICE

Work Order No.: 1382-Var-6503; Randy Brown
 1382-Var-6502; Carol Nelson
 4126-Var)
 6220-Var) Frank Lombard
 5760-Var)
 7425)
 7423) Mike Cunnagin
 7564)

*NO monies per [unclear]
 per [unclear] order
 Interagency Agreement*

Project Manager: George Barnes

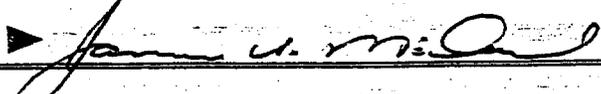
ETHNIC CODES:	MALE	FEMALE	MALE	F
BLACK AMERICANS	1	A	AMERICAN INDIANS/ALASKAN NATIVES	7
ASIAN-PACIFIC AMERICANS	2	B	FILIPINO AMERICANS	8
HISPANIC AMERICANS	4	D	ASIAN-INDIAN AMERICANS	9
PACIFIC ISLANDERS	6	F	CAUCASIAN/WHITE	5

(FOR ASSISTANCE WITH ITEMS 7 AND 8 BELOW, CALL THE OFFICE OF SMALL AND MINORITY BUSINESS IN THE DEPARTMENT OF GENERAL SERVICES.)

7. ENTER ETHNICITY OF CONTRACTOR FROM LIST ABOVE AS DEFINED IN S.A.M. SECTION 1204.4 NA

8. WAS THIS CONTRACT AWARDED TO A SMALL BUSINESS AS DEFINED IN S.A.M. SECTION 1204.17 YES NO NA

9. FOR CONTRACTS IN EXCESS OF \$5,000 HAS THE LETTING OF THIS CONTRACT BEEN REPORTED TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PURSUANT TO S.A.M. SECTION 1212.117 YES NO NA

10. AUTHORIZED SIGNATURE


11. NAME AND TITLE
 James U. McDaniel, Chief, Central District

PRE-EVALUATION SECTION—MUST BE COMPLETED WHEN REQUESTING APPROVAL OF ANY CONTRACT FOR SERVICE

1. JUSTIFICATION FOR CONTRACT (CHECK ONE)

THIS CONTRACT IS TO BE EXECUTED TO ACHIEVE COST SAVINGS PURSUANT TO S.A.M. SECTION 1230.1. THE STATE PERSONNEL BOARD HAS BEEN SO NOTIFIED

THIS CONTRACT IS TO BE EXECUTED PURSUANT TO CIVIL SERVICE CONSIDERATIONS CONTAINED IN S.A.M. SECTION 1230.2. JUSTIFICATION FOR THE CONTRACT IS DESCRIBED BELOW

NA

2. DESCRIBE THE SERVICE OR FINAL PRODUCT WHICH WILL RESULT, ITS BENEFIT AND THE ESTIMATED NUMBER OF PERSONS SERVED BY SUCH SERVICE

NA

3. HOW WILL THE AGENCY USE THE CONTRACT PRODUCT? HOW WILL ITS USE BENEFIT THE AGENCY'S PROGRAM?

NA

4. WHY IS CONTRACTING THE MOST EFFECTIVE METHOD OF ACHIEVING THE AGENCY'S PURPOSE?

NA

5. WHAT BIDDING METHOD WAS USED TO SELECT THE VENDOR?

REQUEST FOR PROPOSAL INVITATION FOR BID OTHER, EXPLAIN—USE ATTACHMENTS IF NECESSARY NA

PROOF OF PUBLICATION IN THE STATE CONTRACTS REGISTER MUST BE ATTACHED. IF SUCH PROOF IS NOT AVAILABLE, A REQUEST FOR EXEMPTION CONTRACT ADVERTISING, STD. FORM 821 MUST BE ATTACHED. (SEE S.A.M. SECTION 1212.6)

6. DOCUMENT EFFORTS MADE TO DETERMINE WHY PERSONNEL IN YOUR AGENCY OR IN OTHER STATE AGENCIES CANNOT PROVIDE THIS WORK. LIST WHICH SERVICE CLASSES WERE CONSIDERED, NAMES OF AGENCIES CONTACTED, AND EXPLAIN WHY THEY CANNOT PROVIDE THE REQUESTED SERVICES.

NA

7. HAVE ALL REQUIREMENTS GOVERNING THE USE OF CURRENT AND FORMER STATE EMPLOYEES AS SPECIFIED IN S.A.M. SECTION 1248 BEEN COMPLIED WITH?

YES NO NA

3. DWR and DFG will monitor in the Marsh in accordance with the Suisun Marsh Monitoring Agreement. USBR and DWR will provide wetlands mitigation in the Marsh in accordance with the Suisun Marsh Mitigation Agreement. USBR and DWR will reimburse Individual Ownerships through SRCD, 50% of the initial cost of individual ownership facilities in accordance with Article 7 of the Agreement. DWR will construct and operate facilities in the Marsh in accordance with Article 8 of the Agreement.

Agreement amount - Article 12(a) requires the USBR to pay 40% of the costs incurred by DWR (including costs of planning, design, construction, operation, maintenance, and recreation prior to the Agreement) for monitoring, mitigation, individual ownership facilities, and Suisun Marsh facilities. Article 12(b) requires that the USBR's share of the design, planning, and construction costs not exceed \$50 million. Total cost unknown at this time.

Agreement term - until terminated by the written agreement of all parties.

OCT 14 1988

David G. Houston, Regional Director
Mid-Pacific Region
Bureau of Reclamation
U. S. Department of the Interior
2800 Cottage Way, Room W1105
Sacramento, CA. 95825-1898

Peter F. Bontadelli, Director
Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Leland C. Lehman, President
Suisun Resource Conservation District
P. O. Box 426
Suisun City, CA. 94585

Gentlemen:

This letter is to request your concurrence with the amendment of Table II and Subarticle 8(a) of the Suisun Marsh Preservation Agreement in accordance with Article 17 of that Agreement.

The Suisun Marsh Salinity Control Gates will be operable in October 1988 as required by Article 8(a) of the Agreement. A plan for testing and evaluating the effectiveness of the Control Gates is currently being developed. A network of monitoring locations on both the east and west sides of the Marsh has been selected to provide the information to be used in this evaluation.

Table II of the Agreement states that one of these sites, referred to as proposed S-21, is to be located in Chadbourne Slough at Chadbourne Road. We believe that while the monitoring location should remain in Chadbourne Slough, the proposed Chadbourne Road site is very vulnerable to known vandalism. Local club managers have stated that past structures built in this area have been quickly and thoroughly destroyed. A location that offers a greater degree of security would be in Chadbourne Slough on the west bank, approximately 150 feet above the bifurcation on the Sunrise Club. The club manager has indicated he would allow access to this area. This modification would move the S-21

David G. Houston
Peter F. Bontadelli
Leland C. Lehman
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OCT 14 1988

site approximately 200 yards upstream of the proposed site at Chadbourne Road bridge. Electrical conductivity samples taken above and below the bifurcation indicate similar quality water between the two monitoring points.

Construction of the S-21 site cannot begin until permits or exemptions are granted from various agencies. In addition, Subarticle 8(a) of the Agreement also requires the construction of the Cygnus Unit, Lower Joice Unit and Annie Mason Unit by the end of the 1988 construction season. We plan to postpone the construction of the Cygnus and Lower Joice Island units until after the current duck hunting season, with all work to be completed before October 1, 1989. The landowner on Annie Mason Island has not completed the prerequisite repair work on exterior levees and, therefore, construction and installation of the pump and supply lines at that site would be premature.

Discussions among Suisun Resource Conservation District, the Department of Water Resources, and the Bureau of Reclamation have been proceeding for several months to enable the Suisun Resource Conservation District to administer construction contracts for the Lower Joice and Cygnus facilities. However, several aspects of this approach need further resolution. Due to time constraints, it will be necessary to schedule construction of these facilities after the upcoming duck hunting season. Landowners from both Lower Joice Island and Cygnus Island have consented to this postponement.

Therefore, I am requesting that the Suisun Marsh Preservation Agreement be amended as follows:

1. Modify the proposed monitoring site location for S-21 described in Table II entitled Control Stations in Article 3(b) from "Chadbourne Slough at Chadbourne Road" to "Chadbourne Slough 150 feet north of the bifurcation with Frank Horan Slough". The new location is: latitude 38° 11' 04" north; and longitude 122° 04' 56" west.
2. Substitute "1989" for "1988" on line three and line six of Subarticle 8(a) of the Agreement.

David G. Houston
Peter F. Bontadelli
Leland C. Lehman
Page 3

007 1 1988

If you agree with the two recommended changes, please countersign all the copies of this letter and return them to me. When all the parties have executed the letter, we will furnish you with a conformed copy. Please feel free to contact me at (916) 445-6582, or George Barnes of our Central District office at (916) 445-1820, if you have any questions.

Sincerely,

Original Signed By
John P. Gaffrey

David N. Kennedy
Director

CONCUR:

Laurence F. Hancock
Bureau of Reclamation

Date: 12-13-88

CONCUR:

Cedward O. Wallis
Department of Fish and Game

Date: 11-18-88

CONCUR:

Leland C. Lehman, Pres.
Suisun Resource Conservation District

Date: 11-2-88

APPROVED FOR LEGAL SUFFICIENCY:

Original signed by

Susan Weber, Chief Counsel

cc: See attached list

cc: Honorable Gordon K. Van Vleck
Secretary for Resources
The Resources Agency
1416 Ninth Street, Room 1311
Sacramento, CA 95814

Orville L. Abbott
Executive Officer and
Chief Engineer
California Water Commission
1416 Ninth Street, Room 1104-4
Sacramento, CA 95814

bcc: Rita Singer ✓
Randy Brown
Ted Tsuruda
Jerry Cox

Harlan Proctor:ik
Text Area: HPBureau

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

**MAR 28 1994**

Mr. Roger Patterson, Regional Director
Mid-Pacific Region
Bureau of Reclamation
U. S. Department of the Interior
2800 Cottage Way, Room W1105
Sacramento, California 95825-1898

Mr. Boyd Gibbons, Director
Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

Mr. George Tillotson, President
Suisun Resource Conservation District
2516 A Grizzly Island Road
Suisun, California 94585

Gentlemen:

This letter is to request your concurrence with amendments to Article 7 Individual Ownership Facilities of the Suisun Marsh Preservation Agreement in accordance with Article 17 of that Agreement.

CURRENT ARTICLE 7 LANGUAGE**7. Individual Ownership Facilities**

(a) USBR and DWR will reimburse each Individual Ownership through SRCD fifty (50) percent of the initial cost of purchasing and installing any water intake and discharge facilities, other than those provided for in I through XI of Attachment A, necessary to enable the Individual Ownership to flood and drain its property within 30 days where such operation is necessary to achieve adequate levels of waterfowl food production as determined by DFG. It is recognized that water intake and discharge facilities on an Individual Ownership may supply water to or drain water from other Individual Ownerships. The total reimbursement obligation of USBR and DWR under this Article shall be limited to the amount specified in subarticle (c) and shall only be used for those water intake and discharge gates, culverts, flashboard risers, and pumps identified in the engineering level Individual Ownership Management Program developed for the property by SRCD, approved by DFG, and certified by the San Francisco Bay Conservation and Development Commission (BCDC).

(b) Prior to reimbursement pursuant to subarticle (a) the Individual Ownership shall first enter into an agreement with USBR, DWR, and SRCD which shall provide that the Individual Ownership will either follow the "needed practices" identified in its Individual Ownership Management Program or will repay with interest the funds provided by USBR and DWR.

(c) The obligation of USBR and DWR under this Article shall not exceed \$995,000 (July 1, 1985 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in construction costs, as indicated by the "Engineering News-Record's" cost indexes), shared in accordance with Article 12. USBR and DWR obligations under this Article shall terminate four years after the Montezuma Slough Control Structure Becomes Operational, or four years after the execution of this Agreement, whichever is later.

PROPOSED ARTICLE 7 LANGUAGE

7. Individual Ownership Facilities

(a) USBR and DWR will reimburse each Individual Ownership through SRCD ~~fifty (50)~~ seventy five (75) percent of the initial cost of purchasing and installing any water intake and discharge facilities regardless of when the facilities were approved for payment, other than those provided for in I through XI of Attachment A, necessary to enable the Individual Ownership to flood and drain its property within 30 days where such operation is necessary to achieve adequate levels of waterfowl food production as determined by DFG. It is recognized that water intake and discharge facilities on an Individual Ownership may supply water to or drain water from other Individual Ownerships. The total reimbursement obligation of USBR and DWR under this Article shall be limited to the amount specified in subarticle (c) and shall only be used for the development of engineering level Individual Ownership Water Management Plans meeting SRCD standards and those facilities water intake and discharge gates, culverts, flashboard risers, and pumps identified as needed improvements in the engineering level Individual Ownership Management Program developed for the property by SRCD, approved by DFG, USBR and DWR, and certified by the San Francisco Bay Conservation and Development Commission (BCDC).

Mr. Roger Patterson, Regional Director, et al

MAR 28 1994

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Payment to SRCD for the preparation of the engineering level Individual Ownership Management Plans meeting SRCD standards shall be a total of \$12,900 for the period July 1, 1992 through June 30, 1993 and a total of \$26,700 for the period July 1, 1993 through June 30, 1994.

Payment to SRCD for the period July 1, 1992 through June 30, 1993 will be made after DWR and USBR receive a progress report from SRCD detailing: 1) the results of the spot checks for elevations; 2) the new formulas developed to determine the water management facility plan for each ownership; and 3) the files detailing the computerized descriptions for each ownership.

Payment to SRCD for the period July 1, 1993 through June 30, 1994 will be made after DWR and USBR receive the following information from SRCD:

- A digitized copy of the data base.
- A digitized copy of the computer program used to establish the channel water elevations at the fill and drain sites and a digitized copy of the data files used to compute the water surface elevations and;
- A full Marsh map illustrating ownership boundaries and the location of bench marks used to establish ground elevations for the ownerships;

For each ownership:

- Ownership name, number and contact person;
- A description of the ownership's specific habitat objective, a copy of the current DFG and BCDC approved and the proposed management plan detailing required improvements;
- An ownership map illustrating the location and dimensions of channel fill and drain facilities (culverts, weir boxes, flow controllers and pumps), internal water distribution ditches, and the internal fill and drain flow patterns;
- Water surface elevations (relative to mean lower low water at the Golden Gate) for the higher high water and lower low water used in the determination of fill and drain durations;

MAR 28 1994

Page Four

- Total area in acres:
- Total flooded area in acres:
- Average pond bottom elevation relative to mean lower low water at the Golden Gate or other known datum:
- Average shooting depth above average pond bottom:
- A description of ownership's revised fill and drain practices including when filling starts, how long it takes to fill, when draining starts, how long to drain to one foot below average pond bottom (if possible) and the number of leach cycles performed each year; and
- Assumptions and special considerations (if any) applied during the determination of the revised plan.

(b) Prior to reimbursement for the cost of needed improvements pursuant to subarticle (a) the Individual Ownership shall first enter into an agreement with USBR, DWR, and SRCD which shall provide that for the useful life of the facility, the Individual Ownership will either follow the "needed practices" identified in its Individual Ownership Management Program or will repay with interest the funds provided by USBR and DWR.

(c) The obligation of USBR and DWR under this Article shall not exceed \$995,000 (July 1, 1985 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in construction costs, as indicated by the "Engineering News-Record's" cost indexes), shared in accordance with Article 12. USBR and DWR obligations under this Article shall terminate four years after the Montezuma Slough Control Structure Becomes Operational, or four years after the execution of this Agreement, whichever is later October 1, 1998, or the date the Western Suisun Marsh Salinity Control Project facilities becomes operational, whichever comes later.

Mr. Roger Patterson, Regional Director, et al

MAR 28 1984
Page Five

If you agree with these changes, please countersign all copies of this letter and return them to me as soon as possible. When all parties have executed the letter, we will furnish you with a copy.

For further information, you may wish to contact Dwight Russell at (916) 323-8888.

Sincerely,

(sgd) David N. Kennedy

David N. Kennedy
Director

CONCUR:

Lutes Smith
U. S. Bureau of Reclamation

Date: 5/27/94

CONCUR:

A. P. Smith
Department of Fish and Game

Date: 5/17/94

CONCUR:

[Signature]
Suisun Resource Conservation District

Date: 4/6/94

APPROVED FOR LEGAL SUFFICIENCY:

Original signed by:

Susan N. Weber

Susan Weber, Chief Counsel

Date: MAR 16 1994

cc: (See attached list)

FORM	POLICY	DATE
Department of General Services		
APPROVED		
JUN 21 1994		
BY ORIGINAL SIGNED BY		
GARRY NESS		
Asst. Chief Counsel		

Mr. Garry Sackett
U. S. Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825

Mr. Lee Lehman
Suisun Resources Conservation District
2516 A Grizzly Island Road
Suisun, California 94585

Mr. Perry Herrgesell
Department of Fish and Game
4001 North Wilson Way
Stockton, California 95205

Mr. Frank Wernette
Department of Fish and Game
4001 North Wilson Way
Stockton, California 95205

Mr. Randall L. Brown
Department of Water Resources
Environmental Services Office
3251 S Street
Sacramento, California 95816

Mr. Harlan Proctor
Department of Water Resources
Environmental Services Office
3251 S Street
Sacramento, California 95816

Ms. Bellory Fong
Department of Water Resources
Environmental Services Office
3251 S Street
Sacramento, California 95816

✓ Mr. Dwight Russell
Department of Water Resources
Environmental Services Office
3251 S Street
Sacramento, California 95816

Ms. Rita Singer
Department of Water Resources
Office of the Chief Counsel
1416 Ninth Street, Room 1118-10
Sacramento, California 95814

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

1. **INVOICING AND PAYMENT:** Contractor shall submit three (3) copies of the invoice to the State only after receiving **verbal** notice of satisfactory completion or acceptance of work by the DWR Contract Manager. **The State will not accept an invoice for which work has not been approved and will return the invoice as a disputed invoice to the Contractor.**

Itemized invoices may be submitted no more often than monthly, in arrears, bearing the contract number, the period covered, and a short description of the deliverables including, but not limited to, labor, equipment, materials, travel, overhead, and costs.

Submit two (2) copies of each invoice to the Contract Manager at the following address:

Department of Water Resources
Environmental Services Office
Attention: SMPA Contract Manager
3251 "S" Street
Sacramento, California 95816

Submit one (1) additional copy of each invoice simultaneously to the DWR Accounting Office at the following address in order to expedite approval and payment:

DWR Accounting Office, Contracts Payable Unit
P. O. Box 942836
Sacramento, California 94236-0001

Undisputed invoices shall be **approved for payment** within 45 days of the date received by the Contract Manager and/or the Accounting Office, whichever date occurs later.

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Suisun Resource Conservation District (SRCD) or to furnish any other considerations under this Agreement and SRCD shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement

with no liability occurring to the State, or offer an Agreement Amendment to SRCD to reflect the reduced amount.

The contract amount is divided between Programs (1) through (4) as shown in Table B-1 and described in Article VIII of the Revised Suisun Marsh Preservation Agreement (Exhibit A).

Table B-1. Distribution of costs by task

Program Title	Initial Program Costs ¹	Annual Expenditure ²
Water Manager Program/Individual Ownership	\$130,600	\$234,190
Adaptive Habitat Management Plans		
Drought Response Program	—	\$80,596 ³
Portable Pumps Program	\$547,757	—
Improvements to Roaring River turnouts	\$67,164	—
TOTAL	\$745,521	\$314,786

1. Each year in July any unexpended funds will be adjusted for inflation as described in Article VIII.F of Exhibit A.
2. Each year in July these values will be adjusted for inflation as described in Article VIII.F of Exhibit A.
3. Expenditures from the Drought Response Program are on an as needed basis as defined in Article VII.B.4 of Exhibit A.

The distribution of costs in Table B-1 may be modified without amendment based on changes in actual costs for performing work under this Agreement, as allowed by State Administrative Manual, Section 8752. The Contractor shall inform DWR in writing that the distribution of costs will differ from those listed in the attached exhibits, immediately after the Contractor determines that costs will differ. The Contractor shall provide a new written revised budget to DWR; if so requested by DWR, prior to performing work.

GTC 304

EXHIBIT C
Applicable to SRCD

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 304 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.”

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. UNION ACTIVITIES For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

b) No state funds received under this agreement will be used to assist, promote or deter union organizing.

c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

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EXHIBIT C1

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF
WATER RESOURCES**

APPLICABLE TO SRCO AS A LOCAL PUBLIC ENTITY (PAYABLES)

Exhibit C1
Special Terms and Conditions for Department of Water Resources
Applicable to SRCD as a Local Public Entity (Payables)

1. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
2. SEVERABILITY: If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.
3. EQUIPMENT RENTAL AGREEMENTS: This provision shall apply to equipment rental agreements. The State shall not be responsible for loss or damage to the rented equipment arising from causes beyond the control of the State. The State's responsibility for repairs and liability for damage or loss to such equipment is restricted to that made necessary or resulting from the negligent act or omission of the State or its officers, employees, or agents.
4. CONFLICT OF INTEREST:
 - a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
 - (1) Current State Employees: (PCC §10410)
 - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
 - (2) Former State Employees: (PCC §10411)
 - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - (b) For the twelve-month period from the date he or she left state employment,

no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

- (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

- (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Financial Interest in Contracts:

Contractor should also be aware of the following provisions of Government Code §1090:

"Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

e. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), the Contractor and any subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

5. PAYMENT RETENTION CLAUSE: Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Sections 10346 and 10379 pending satisfactory completion of all services under the contract.
6. RENEWAL OF CCC: Contractor shall renew the Contractor Certification Clauses or successor documents every (3) years or as changes occur, whichever occurs sooner.
7. AGENCY LIABILITY: The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage,

or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

8. POTENTIAL SUBCONTRACTORS: Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.
9. REPORT RECYCLED CONTENT CERTIFICATION: In accordance with Public Contract Code Sections 10233, 10308.5 and 10354, the contractor must complete and return the form DWR 74, Recycled Content Certification, for each required product to the Department at the conclusion of services specified in this contract. Form DWR 74 is attached to this Exhibit and made part of this contract by this reference.
10. REIMBURSEMENT CLAUSE: If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: [REDACTED].

EXHIBIT D

GENERAL TERMS AND CONDITIONS FOR INTERAGENCY AGREEMENTS

APPLICABLE TO DFG AND DWR

Exhibit D

GLA101 – General Terms and conditions for Interagency Agreements

Applicable to DFG and DWR

1. APPROVAL: This Agreement is not valid until signed by both parties and approved by the Department of General Services, if required.
2. AUDIT: The agency performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The agency performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.
3. PAYMENT: Costs for this Agreement shall be computed in accordance with State Administrative Manual Section 8752 and 8752.1.
4. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
5. SUBCONTRACTING: All subcontracting must comply with the requirements of the State Contracting Manual, Section 3.06.
6. ADVANCE PAYMENT: The parties to this interagency agreement may agree to the advancing of funds as provided in Government Code Sections 11257 through 11263.
7. DISPUTES: The agency performing work under this Agreement shall continue with the responsibilities under this Agreement during any dispute.
8. TIMELINESS: Time is of the essence in this Agreement.

EXHIBIT D1

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF
WATER RESOURCES**

APPLICABLE TO DFG AND DWR

Exhibit D1
Special Terms and Conditions for Department of Water Resources
Applicable to DFG and DWR

1. **COMPUTER SOFTWARE:** For contracts in which software usage is an essential element of performance under this Agreement, the Department of Fish and Game (DFG) and Department of Water Resources (DWR) certify that they have appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of applicable copyright laws.
2. **SEVERABILITY:** If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.
3. **CONFLICT OF INTEREST:**
 - a. **Current and Former State Employees:** DFG and DWR should be aware of the following provisions regarding current or former state employees. If DFG or DWR have any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
 - (1) **Current State Employees:** (PCC §10410)
 - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
 - (2) **Former State Employees:** (PCC §10411)
 - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

(a) If DFG or DWR violate any provisions of above paragraphs, such action shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

(a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Financial Interest in Contracts:

DFG and DWR should also be aware of the following provisions of Government Code §1090:

“Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

e. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), DFG or DWR and any of their subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

EXHIBIT E

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF
WATER RESOURCES**

APPLICABLE TO THE U.S. BUREAU OF RECLAMATION

Exhibit E
Special Terms and Conditions for Department of Water Resources
Applicable to the U.S. Bureau of Reclamation

1. OFFICIALS NOT TO BENEFIT: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this agreement if made with a corporation for its general benefit.

2. NONDISCRIMINATION CLAUSE: During the performance of this Agreement, U.S. Bureau of Reclamation (USBR) and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. USBR and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. USBR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

USBR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. This provision shall apply to the extent provided by federal laws, rules, and regulations.

3. INDEPENDENT CONTRACTOR: The USBR, and its agents and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

4. SEVERABILITY: If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.

5. TIMELINESS: Time is of the essence in this Agreement.

6. SOFTWARE COPYRIGHT: For contracts in which software usage is an essential element of performance under this Agreement, the USBR certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of applicable copyright laws.

EXHIBIT F

**DEPARTMENT OF WATER RESOURCES STANDARD
CONTRACT PROVISIONS REGARDING POLITICAL REFORM
ACT COMPLIANCE**

APPLICABLE TO DFG AND SRCD

California Department of Water Resources

**Standard Contract Provisions Regarding
Political Reform Act Compliance**

1. POLITICAL REFORM ACT REQUIREMENTS:

- a. Form 700 Disclosure: The Department of Water Resources (DWR) considers that the Contractor, subcontractor(s), and/or their key staff may be a consultant, i.e., a public official, within the meaning of the Political Reform Act, specifically Government Code §82048 and Title 2, California Code of Regulations §18701. Accordingly, as specified by DWR, such persons shall complete and submit to the DWR Personnel Officer a Form 700, Statement of Economic Interests, within 30 days of the earlier of the date work commences or the effective date of this agreement, updated both annually and when changes in key staff or duties occur. The financial interests disclosed shall be for Disclosure Category 1. Contractors may access the Form 700 on the Fair Political Practices Commission website at www.fppc.ca.gov. Any questions regarding completion of the Form 700 should be addressed to the FPPC at its website or at (866) 275-3772 (866/ASK-FPPC). A leaving office statement must also be filed upon completion of all contract assignments.
- b. Financial Conflict of Interest Prohibition: Contractor must review the Form 700s filed by its key staff and subcontractors and determine whether, in the light of the interests disclosed, performance under the contract could violate Government Code §87100. Contractor shall notify DWR immediately of any potentially disqualifying conflict of interest. Government Code §87100 provides:

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

- c. Consequences of Failure to Comply with Political Reform Act Requirements: Any one of the following shall constitute a breach of this Contract and shall be grounds for immediate termination of this Contract:
- (1) Failure to complete and submit all required Form 700s within the 30-day period as required in paragraph A above, or respond to any

request from the DWR Personnel Officer for additional information regarding any such Form 700s;

- (2) Failure to notify DWR of a potentially disqualifying conflict of interest;
- (3) The determination by DWR or the Contractor that any individual, who is a contractor, subcontractor, and/or a key member of their staff, has a financial interest that could result in a violation of Government Code §87100 provided, however, that DWR may opt to waive such breach if Contractor replaces any such individual within two working days after a determination of such financial interest.

Pt Buckler 2013



Google earth

700 ft



Pt Buckler 2015



Google earth

700 ft

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE:	July 10, 2015	DEPT. NO.:	24
JUDGE:	HON. SHELLYANNE W. L. CHANG	CLERK:	E. HIGGINBOTHAM
THE WEST SIDE IRRIGATION DISTRICT; CENTRAL DELTA WATER AGENCY; SOUTH DELTA WATER AGENCY; WOODS IRRIGATION COMPANY, <p style="text-align: center;">Petitioners and Plaintiffs,</p> <p style="text-align: center;">v.</p> CALIFORNIA STATE WATER RESOURCES CONTROL BOARD; THOMAS HOWARD, EXECUTIVE DIRECTOR OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD; and DOES 1 THROUGH 100, INCLUSIVE, <p style="text-align: center;">Respondents and Defendants.</p>		Case No.: 34-2015-80002121	
Nature of Proceedings:		ORDER AFTER HEARING ON EX PARTE APPLICATION FOR TEMPORARY STAY RE: ENFORCEMENT OF CURTAILMENT NOTICE OR IN THE ALTERNATIVE TEMPORARY RESTRAINING ORDER AND/OR FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION	

This matter came before the Court pursuant to an ex parte application by the West Side irrigation District, Central Delta Water Agency, and South Delta Water Agency. The ex parte application seeks a stay or a temporary restraining order/order to show cause concerning the May 1, 2015 and June 12, 2015, “NOTICE OF UNAVAILABILITY OF WATER AND NEED FOR IMMEDIATE CURTAILMENT...”¹ (hereinafter referred to as the “May Curtailment Letter” and the “June Curtailment Letter”, jointly referred to as the “Curtailment Letters”) issued by the State Water Resources Control Board through its Executive Director Thomas Howard.

Counsel for Petitioners/Plaintiffs appeared at the ex parte hearing, as well as counsel for Respondents/Defendants. All parties had the opportunity to present oral arguments concerning the issues raised in the moving and opposing papers.

¹ This language is from the heading of the June 1, 2015 letter. The May 1, 2015 letter is titled, “NOTICE OF UNAVAILABILITY OF WATER AND IMMEDIATE CURTAILMENT...”

The Court finds the May Curtailment Letter is properly subject to a judicial determination of whether it violates the Petitioners' due process rights such that a temporary restraining order/order to show cause should issue.² The Court finds there is no administrative process Petitioners must exhaust prior to this determination as to the May Curtailment Letter.³

Although a petition for reconsideration is still pending concerning the May Curtailment Letter, the Court finds that this is a situation where the pursuit of the administrative remedy would result in irreparable harm absent a temporary restraining order. (See *People ex rel. DuFauchard v. U.S. Financial Management, Inc.* (2009) 169 Cal.App.4th 1502, 1512)(citing *Public Employment Relations Bd. v. Superior Court* (1993) 13 Cal.App.4th 1816, 1827.) Petitioners' belief that they must stop diverting water, not because to do so would be a legal violation but merely a violation of the May Curtailment Letter, will result in irreparable harm to their crops while they await a decision on the petition for reconsideration. (Decl. of Jack Alvarez, ¶¶ 7, 8, 11.) Consequently, Petitioners will be irreparably harmed should they have to wait for final resolution of the administrative process before obtaining relief from the immediate mandate the May Curtailment Letter appears to impose outside of the statutory processes provided by the Water Code.

Moreover, for the reasons stated below, the Court finds that the issuance of the May Curtailment Letter violated Petitioners' Due Process rights. Every day the Letter remains in its current form constitutes a violation of those constitutional rights. Accordingly, it is proper for this Court to issue a temporary restraining order while the administrative process is ongoing.

With regard to the June Curtailment Letter, the Court liberally construes the allegations of the Petition For Writ of Administrative Mandate, as it must, and finds that for purposes of this ex parte application, Petitioners CDWA and SDWA have adequately pled that their landowners exercise pre-1914 appropriative and/or permit licenses rights that are subject to the directives given in the Letter. (Petition, ¶¶ 13, 14.) Consequently, Petitioners CDWA and SDWA have standing to bring the instant application concerning the June Curtailment Letter.

The Court finds the 2015 Curtailment Letters are coercive in nature and go beyond the "informational" purpose the Board claims prevents a stay. Consequently, Petitioners are likely to succeed on the merits. As in *Duarte*, even though the Curtailment Letters are not

² Petitioners have filed a petition for reconsideration pursuant to California Water Code section 1126(b) which petition is still pending before the Water Resources Control Board and for which the 90-day period for reconsideration has not yet expired. (See Petition, ¶ 21; Wat. Code §1122.) The Court declines to interfere in these administrative proceedings, and consequently in no way stays the furtherance of that petition in accordance with the Water Code. The Court agrees that in light of the pending reconsideration petition, this matter is not subject to a Civil Code section 1094.5, subdivision (g) stay.

³ Respondents have not argued Petitioners are required to exhaust their administrative remedies. Respondents have instead argued the petition with regard to the May Curtailment Letter is untimely pursuant to the 30-day deadline in section 1126. However, this deadline is extended while a petition for reconsideration is pending, as is the case here.

enforceable on their own and there are no separate penalties for violating them, the language used in the Curtailment Letters results in a “command by the...[g]overnment to stop [water diverting] activities.” (*Duarte Nursery, Inc. v. United States Army Corps of Engineers* (2014) 17 F.Supp.3d 1013, 1018.) It is not a suggestion for “voluntary cessation of activities,” but instead requires Petitioners to “immediately stop diverting water.” (*Id.* at 1019; Pet. exh. B.)

Respondents argue *Duarte* is distinguishable because it involved a single letter sent to a single rights-holder, and provided that the Army Corps of Engineers had already determined that a violation of the Clean Water Act had occurred. (*Duarte*, 17 F.Supp.3d at 1015.) Respondents contend here, the Curtailment letters are form letters being sent to hundreds of appropriators, and are merely informational with no pre-determination that any individual rights-holder has violated the law.

While all parties acknowledge the Curtailment Letters were sent to more than one appropriator, the letters provided to the Court are addressed to an individual company, and identify a specific claim of rights at issue. The Curtailment Letters further declare and determine that the recipient is not entitled to divert water because that water is necessary to meet senior water rights holders, thus making a determination of the recipient’s water rights priority. (Pet., exh. B, ¶2.) Through the inclusion of this specific information, the Curtailment Letters appear not to be generalized notices, but instead a specific adjudication and command with respect to the particular rights holder.

Further, nothing in *Duarte* limits its holding to an instance involving only one notice. The *Duarte* court’s focus was on the fact that nothing in the letter notified “plaintiffs that the Corps could not take action based upon the CDO alone.” (*Duarte*, 17 F.Supp.3d at 1022.) The same is true here, as the Curtailment Letters indicate the recipient must “immediately stop diverting water” and do not clearly state that the letter is merely informational, without any legal force or effect.

The Curtailment Letters also require recipients to “document receipt of this notice by completing an online Curtailment Certification Form (Form) within seven days. The Form confirms your cessation of diversion under the specific pre-1914 claim of right. Completion of the Form is mandatory...” Nowhere in this language do the Curtailment Letters assert that Petitioners are free to ignore the directive that they cease diverting water or that it is merely a suggestion.⁴ At the hearing on this matter, Respondents acknowledged that the Form requires diverters to sign under penalty of perjury that they are no longer diverting water.

Although the Curtailment Letters do not state that the Board has made a specific determination that the particular recipient has already engaged in illegal conduct, the letters plainly state that the recipient must “immediately stop diverting water” and that

⁴ This is similar to *Phelps v. State Water Resources Control Board* (2007) 157 Cal.App.4th 89, where the Court held plaintiffs were aggrieved by a curtailment notice within the meaning of section 1126(b) because it “required plaintiffs to immediately discontinue diversion of water under their licenses.” Although *Phelps* involved only one notice, the implication of the language of the letters is the same as in this case.

the only action available is to sign the compliance certification that “confirms your cessation of diversion under the specific pre-1914 claim of right.” (Pet., exh. B.)⁵ As in *Duarte*, this strong directive implicates a pre-determination as to the availability of water pursuant to the recipient’s appropriation rights. The Board, “did not ‘notify’ plaintiffs they were operating in violation of the law, it commanded plaintiffs to stop their activities.” (*Duarte*, 17 F.Supp.3d at 1023.)

At oral argument, Respondents argued that because the Curtailment Letters did not expand or alter Petitioners’ civil liability for water diversions and are merely “informational documents”, a temporary restraining order should not issue. Respondents’ argument is not only misguided, it is also inaccurate.

The focus is not whether the Petitioners’ legal exposure remains unchanged or not, but rather whether the Curtailment Letters could be reasonably interpreted to be an order or command by the government, not merely a suggestion or request for voluntary cessation of activities. (*Duarte*, 17 F.Supp.3d at 1020.) Moreover, contrary to Respondents’ assertions, the Curtailment Letters have altered Petitioners’ legal position. The Curtailment Letters state that even if there is available water for the water user, said water is dedicated for senior water rights’ holders needs, conclude that the recipient no longer has any legal right to said water, and orders the recipient to “immediately stop diverting water...” Indeed, the Curtailment Letters appear to alter Petitioners’ civil liability as the Board has apparently concluded without hearing or notice that Petitioners are no longer entitled to divert water for their needs.

As the Court in *Duarte* stated, “If the [Letters] were simply a ‘notification’ to plaintiffs, then it should have said so, rather than clothing itself as an ‘order’ which carried with it the authority to ‘prohibit’ the plaintiffs from continuing their activities.” (*Duarte*, 17 F.Supp.3d at 1020.) The Court recognizes, and Respondents admit, that the Curtailment Letters do not subject Petitioners to any additional liability or penalties above that which they may already be subjected to due to the extreme drought conditions California is currently experiencing. However, the Curtailment Letters represent that the Board has already adjudicated that the recipients are no longer entitled to divert water and that any future diversions would be improper and a trespass [“This Form confirms your cessation of diversion under the specific post-1914 water right... Completion of the form is mandatory to avoid unnecessary enforcement proceedings”].

Respondents are free to provide truly informational notices to water diverters of the nature of the drought and the Board’s right to initiate Water Code section 1831 or 1052 proceedings. Respondents are also free to initiate inquiries with diverters as to whether they have alternate water sources and to otherwise exercise their statutory enforcement authority under the Water Code, including investigation and instituting any actions for trespass. To be clear, Respondents are free to exercise their statutory authority to enforce the Water Code as to any water user, including these Petitioners, if it deems them to be in

⁵ In *Duarte* the Court noted that the assertion that a violation has already occurred, by itself, is insufficient to satisfy the ripeness requirement. A letter or notice must also threaten consequences for failure to take certain action, as it does here. (*Duarte*, 17 F.Supp.3d at 1025.)

violation of any provisions of the Water Code, so long as the bases for said action are not the Curtailment Letters.

However, the language of the Curtailment Letters goes beyond informational and is instead coercive such that a recipient is likely to believe they are no longer allowed to divert. This belief is not because such a diversion would be a trespass or other legal violation, but because the Board has already declared in the Curtailment Letters that it has made a determination that they are no longer entitled to divert under their appropriative water rights, without any sort of pre-deprivation hearing. Respondents do not challenge Petitioners' assertion that any cessation of water diversion done in response to the Curtailment Letters, not as a result of an unavailability of legally divertible water, would cause a serious hardship to Petitioners. This is an issue ripe for judicial intervention and the Court concludes that the Curtailment Letters as presently drafted constitute a violation of the due process rights of the Petitioners.⁶

The Curtailment Letters, including the requirement that recipients sign a compliance certification confirming cessation of diversion, result in a taking of Petitioners' property rights without a pre-deprivation hearing, in violation of Petitioners' Due Process Rights. The Court hereby **GRANTS** the ex parte application for a temporary restraining order/order to show cause as to why a preliminary injunction should not issue requiring the Board to issue a revised letter/notice that is informational in nature.

A temporary restraining order shall issue staying or prohibiting Defendants State Water Resources Control Board and Thomas Howard from taking any action against the West Side Irrigation District and landowners of the other petitioner Districts on the basis of the 2015 Curtailment Letters sent by the Water Board's Executive Director, Thomas Howard, or on the basis of a failure to complete a Curtailment Certification Form.

The matter is set for an order to show cause on July 30, 2015 at 9:00 a.m. in Department 24. Respondents shall file with the clerk of Department 24 and serve (via email or fax) any supplemental Opposition to the Order To Show Cause no later than July 16, 2015. Petitioners shall file with the clerk of Department 24 and serve (via email or fax) any Reply no later than July 23, 2015. The application for a temporary stay pursuant to CCP §1094.5(g) is **DENIED**.

Counsel for Petitioners to submit a formal order for the Court's signature pursuant to CRC 3.1312.

⁶ There is no allegation that Petitioners have filed a petition for reconsideration with the Board concerning the June Curtailment Notice. Respondents made no argument that Petitioners were required to do so before bringing the instant petition and ex parte application. Consequently, the Court does not address whether such a reconsideration petition was required.

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Public Law 89-234

AN ACT

October 2, 1965
[S. 4]

To amend the Federal Water Pollution Control Act to establish a Federal Water Pollution Control Administration, to provide grants for research and development, to increase grants for construction of sewage treatment works, to require establishment of water quality criteria, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) (1) section 1 of the Federal Water Pollution Control Act (33 U.S.C. 466) is amended by inserting after the words "SECTION 1." a new subsection (a) as follows:

Water Quality
Act of 1965,
70 Stat. 498.

"(a) The purpose of this Act is to enhance the quality and value of our water resources and to establish a national policy for the prevention, control, and abatement of water pollution."

(2) Such section is further amended by redesignating subsections (a) and (b) thereof as (b) and (c), respectively.

(3) Subsection (b) of such section (as redesignated by paragraph (2) of this subsection) is amended by striking out the last sentence thereof and inserting in lieu of such sentence the following: "The Secretary of Health, Education, and Welfare (hereinafter in this Act called 'Secretary') shall administer this Act through the Administration created by section 2 of this Act, and with the assistance of an Assistant Secretary of Health, Education, and Welfare designated by him, shall supervise and direct (1) the head of such Administration in administering this Act and (2) the administration of all other functions of the Department of Health, Education, and Welfare related to water pollution. Such Assistant Secretary shall perform such additional functions as the Secretary may prescribe."

Administration.

(b) There shall be in the Department of Health, Education, and Welfare, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of Health, Education, and Welfare who shall be appointed by the President, by and with the advice and consent of the Senate. The provisions of section 2 of Reorganization Plan Numbered 1 of 1953 (67 Stat. 631) shall be applicable to such additional Assistant Secretary to the same extent as they are applicable to the Assistant Secretaries authorized by that section. Paragraph (17) of section 303(d) of the Federal Executive Salary Act of 1964 (78 Stat. 418) is amended by striking out "(5)" before the period at the end thereof and inserting in lieu thereof "(6)."

Additional As-
sistant Secretary
of Health, Edu-
cation, and Wel-
fare.

5 USC 623 note.

Ante, p. 449.

SEC. 2. (a) Such Act is further amended by redesignating sections 2 through 4, and references thereto, as sections 3 through 5, respectively, sections 5 through 14, as sections 7 through 16, respectively, by inserting after section 1 the following new section:

"FEDERAL WATER POLLUTION CONTROL ADMINISTRATION

"SEC. 2. Effective ninety days after the date of enactment of this section there is created within the Department of Health, Education, and Welfare a Federal Water Pollution Control Administration (hereinafter in this Act referred to as the 'Administration'). The head of the Administration shall be appointed, and his compensation fixed, by the Secretary. The head of the Administration may, in addition to regular staff of the Administration, which shall be initially provided from the personnel of the Department, obtain, from within the Department or otherwise as authorized by law, such professional, technical, and clerical assistance as may be necessary to discharge the Administration's functions and may for that purpose use funds available for carrying out such functions; and he may delegate any of his

Establishment.

functions to, or otherwise authorize their performance by, any officer or employee of, or assigned or detailed to, the Administration.”

Transferring
officers.

70 Stat. 498,
33 USC 466
note.

(b) Subject to such requirements as the Civil Service Commission may prescribe, any commissioned officer of the Public Health Service who, on the day before the effective date of the establishment of the Federal Water Pollution Control Administration, was, as such officer, performing functions relating to the Federal Water Pollution Control Act may acquire competitive civil service status and be transferred to a classified position in the Administration if he so transfers within six months (or such further period as the Secretary of Health, Education, and Welfare may find necessary in individual cases) after such effective date. No commissioned officer of the Public Health Service may be transferred to the Administration under this section if he does not consent to such transfer. As used in this section, the term “transferring officer” means an officer transferred in accordance with this subsection.

Retirement
credit.

70 Stat. 743,
5 USC 2251
note.

(c) (1) The Secretary shall deposit in the Treasury of the United States to the credit of the civil service retirement and disability fund, on behalf of and to the credit of each transferring officer, an amount equal to that which such individual would be required to deposit in such fund to cover the years of service credited to him for purposes of his retirement as a commissioned officer of the Public Health Service to the date of his transfer as provided in subsection (b), but only to the extent that such service is otherwise creditable under the Civil Service Retirement Act. The amount so required to be deposited with respect to any transferring officer shall be computed on the basis of the sum of his basic pay, allowance for quarters, and allowance for subsistence and, in the case of a medical officer, his special pay, during the years of service so creditable, including all such years after June 30, 1960.

(2) The deposits which the Secretary of Health, Education, and Welfare is required to make under this subsection with respect to any transferring officer shall be made within two years after the date of his transfer as provided in subsection (b), and the amounts due under this subsection shall include interest computed from the period of service credited to the date of payment in accordance with section 4(e) of the Civil Service Retirement Act (5 U.S.C. 2254(e)).

Ante, pp. 290,
379.

(d) All past service of a transferring officer as a commissioned officer of the Public Health Service shall be considered as civilian service for all purposes under the Civil Service Retirement Act, effective as of the date any such transferring officer acquires civil service status as an employee of the Federal Water Pollution Control Administration; however, no transferring officer may become entitled to benefits under both the Civil Service Retirement Act and title II of the Social Security Act based on service as such a commissioned officer performed after 1956, but the individual (or his survivors) may irrevocably elect to waive benefit credit for the service under one Act to secure credit under the other.

(e) A transferring officer on whose behalf a deposit is required to be made by subsection (c) and who, after transfer to a classified position in the Federal Water Pollution Control Administration under subsection (b), is separated from Federal service or transfers to a position not covered by the Civil Service Retirement Act, shall not be entitled, nor shall his survivors be entitled, to a refund of any amount deposited on his behalf in accordance with this section. In the event he transfers, after transfer under subsection (b), to a position covered by another Government staff retirement system under which credit is allowable for service with respect to which a deposit is required under subsection (c), no credit shall be allowed under the Civil Service Retirement Act with respect to such service.

(f) Each transferring officer who prior to January 1, 1957, was insured pursuant to the Federal Employees' Group Life Insurance Act of 1954, and who subsequently waived such insurance, shall be entitled to become insured under such Act upon his transfer to the Federal Water Pollution Control Administration regardless of age and insurability.

Insurance coverage.
68 Stat. 736.
5 USC 2091
note.

(g) Any commissioned officer of the Public Health Service who, pursuant to subsection (b) of this section, is transferred to a position in the Federal Water Pollution Control Administration which is subject to the Classification Act of 1949, as amended, shall receive a salary rate of the General Schedule grade of such position which is nearest to but not less than the sum of (1) basic pay, quarters and subsistence allowances, and, in the case of a medical officer, special pay, to which he was entitled as a commissioned officer of the Public Health Service on the day immediately preceding his transfer, and (2) an amount equal to the equalization factor (as defined in this subsection); but in no event shall the rate so established exceed the maximum rate of such grade. As used in this section, the term "equalization factor" means an amount determined by the Secretary to be equal to the sum of (A) 6½ per centum of such basic pay and (B) the amount of Federal income tax which the transferring officer, had he remained a commissioned officer, would have been required to pay on such allowances for quarters and subsistence for the taxable year then current if they had not been tax free.

Compensation.
63 Stat. 954.
5 USC 1071
note.

"Equalization factor."

(h) A transferring officer who has had one or more years of commissioned service in the Public Health Service immediately prior to his transfer under subsection (b) shall, on the date of such transfer, be credited with thirteen days of sick leave.

Sick leave.

(i) Notwithstanding the provisions of any other law, any commissioned officer of the United States Public Health Service with twenty-five or more years of service who has held the temporary rank of Assistant Surgeon General in the Division of Water Supply and Pollution Control of the United States Public Health Service for three or more years and whose position and duties are affected by this Act, may, with the approval of the President, voluntarily retire from the United States Public Health Service with the same retirement benefits that would accrue to him if he had held the rank of Assistant Surgeon General for a period of four years or more if he so retires within ninety days of the date of the establishment of the Federal Water Pollution Control Administration.

Special retirement provisions.

(j) Nothing contained in this section shall be construed to restrict or in any way limit the head of the Federal Water Pollution Control Administration in matters of organization or in otherwise carrying out his duties under section 2 of this Act as he deems appropriate to the discharge of the functions of such Administration.

(k) The Surgeon General shall be consulted by the head of the Administration on the public health aspects relating to water pollution over which the head of such Administration has administrative responsibility.

SEC. 3. Such Act is further amended by inserting after the section redesignated as section 5 a new section as follows:

"GRANTS FOR RESEARCH AND DEVELOPMENT

"SEC. 6. (a) The Secretary is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the purpose of assisting in the development of any project which will demonstrate a new or improved method of controlling the discharge into any waters of untreated or inadequately treated sewage or other waste from sewers which carry storm water or both storm water and

Combined sewer systems, pollution control.

sewage or other wastes, and for the purpose of reports, plans, and specifications in connection therewith. The Secretary is authorized to provide for the conduct of research and demonstrations relating to new or improved methods of controlling the discharge into any waters of untreated or inadequately treated sewage or other waste from sewers which carry storm water or both storm water and sewage or other wastes, by contract with public or private agencies and institutions and with individuals without regard to sections 3648 and 3709 of the Revised Statutes, except that not to exceed 25 per centum of the total amount appropriated under authority of this section for any fiscal year may be expended under authority of this sentence during such fiscal year.

31 USC 529;
41 USC 5.

Grant limita-
tions.

“(b) Federal grants under this section shall be subject to the following limitations: (1) No grant shall be made for any project pursuant to this section unless such project shall have been approved by an appropriate State water pollution control agency or agencies and by the Secretary; (2) no grant shall be made for any project in an amount exceeding 50 per centum of the estimated reasonable cost thereof as determined by the Secretary; (3) no grant shall be made for any project under this section unless the Secretary determines that such project will serve as a useful demonstration of a new or improved method of controlling the discharge into any water of untreated or inadequately treated sewage or other waste from sewers which carry storm water or both storm water and sewage or other wastes.

Appropriation.

“(c) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1966, and for each of the next three succeeding fiscal years, the sum of \$20,000,000 per fiscal year for the purposes of this section. Sums so appropriated shall remain available until expended. No grant or contract shall be made for any project in an amount exceeding 5 per centum of the total amount authorized by this section in any one fiscal year.”

Treatment plant
construction
grants.

70 Stat. 502;
75 Stat. 206.
33 USC 466e.

SEC. 4. (a) Clause (2) of subsection (b) of the section of the Federal Water Pollution Control Act herein redesignated as section 8 is amended by striking out “\$600,000,” and inserting in lieu thereof “\$1,200,000.”

(b) The second proviso in clause (2) of subsection (b) of such redesignated section 8 is amended by striking out “\$2,400,000,” and inserting in lieu thereof “\$4,800,000.”

(c) Subsection (b) of such redesignated section 8 is amended by adding at the end thereof the following: “The limitations of \$1,200,000 and \$4,800,000 imposed by clause (2) of this subsection shall not apply in the case of grants made under this section from funds allocated under the third sentence of subsection (c) of this section if the State agrees to match equally all Federal grants made from such allocation for projects in such State.”

(d) (1) The second sentence of subsection (c) of such redesignated section 8 is amended by striking out “for any fiscal year” and inserting in lieu thereof “for each fiscal year ending on or before June 30, 1965, and the first \$100,000,000 appropriated pursuant to subsection (d) for each fiscal year beginning on or after July 1, 1965.”

(2) Subsection (c) of such redesignated section 8 is amended by inserting immediately after the period at the end of the second sentence thereof the following: “All sums in excess of \$100,000,000 appropriated pursuant to subsection (d) for each fiscal year beginning on or after July 1, 1965, shall be allotted by the Secretary from time to time, in accordance with regulations, in the ratio that the population of each State bears to the population of all States.”

(3) The third sentence of subsection (c) of such redesignated section 8 is amended by striking out "the preceding sentence" and inserting in lieu thereof "the two preceding sentences".

75 Stat. 206.
33 USC 466e.

(4) The next to the last sentence of subsection (c) of such redesignated section 8 is amended by striking out "and third" and inserting in lieu thereof " , third, and fourth".

(e) The last sentence of subsection (d) of such redesignated section 8 is amended to read as follows: "Sums so appropriated shall remain available until expended. At least 50 per centum of the funds so appropriated for each fiscal year ending on or before June 30, 1965, and at least 50 per centum of the first \$100,000,000 so appropriated for each fiscal year beginning on or after July 1, 1965, shall be used for grants for the construction of treatment works servicing municipalities of one hundred and twenty-five thousand population or under."

(f) Subsection (d) of such redesignated section 8 is amended by striking out "\$100,000,000 for the fiscal year ending June 30, 1966, and \$100,000,000 for the fiscal year ending June 30, 1967." and inserting in lieu thereof "\$150,000,000 for the fiscal year ending June 30, 1966, and \$150,000,000 for the fiscal year ending June 30, 1967."

(g) Subsection (f) of such redesignated section 8 is redesignated as subsection (g) thereof and is amended by adding at the end thereof the following new sentence: "The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133z—15) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c)."

63 Stat. 108.

(h) Such redesignated section 8 is further amended by inserting therein, immediately after subsection (e) thereof, the following new subsection:

"(f) Notwithstanding any other provisions of this section, the Secretary may increase the amount of a grant made under subsection (b) of this section by an additional 10 per centum of the amount of such grant for any project which has been certified to him by an official State, metropolitan, or regional planning agency empowered under State or local laws or interstate compact to perform metropolitan or regional planning for a metropolitan area within which the assistance is to be used, or other agency or instrumentality designated for such purposes by the Governor (or Governors in the case of interstate planning) as being in conformity with the comprehensive plan developed or in process of development for such metropolitan area. For the purposes of this subsection, the term 'metropolitan area' means either (1) a standard metropolitan statistical area as defined by the Bureau of the Budget, except as may be determined by the President as not being appropriate for the purposes hereof, or (2) any urban area, including those surrounding areas that form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities, which in the opinion of the President lends itself as being appropriate for the purposes hereof."

Increased grants
for urban plan-
ning.

"Metropolitan
area."

SEC. 5. (a) Redesignated section 10 of the Federal Water Pollution Control Act is amended by redesignating subsections (c) through (i) as subsections (d) through (j), and by inserting after subsection (b) the following new subsection:

70 Stat. 504;
75 Stat. 208.
33 USC 466g.

"(c) (1) If the Governor of a State or a State water pollution control agency files, within one year after the date of enactment of this subsection, a letter of intent that such State, after public hearings, will before

Water quality
standards.

June 30, 1967, adopt (A) water quality criteria applicable to interstate waters or portions thereof within such State, and (B) a plan for the implementation and enforcement of the water quality criteria adopted, and if such criteria and plan are established in accordance with the letter of intent, and if the Secretary determines that such State criteria and plan are consistent with paragraph (3) of this subsection, such State criteria and plan shall thereafter be the water quality standards applicable to such interstate waters or portions thereof.

“(2) If a State does not (A) file a letter of intent or (B) establish water quality standards in accordance with paragraph (1) of this subsection, or if the Secretary or the Governor of any State affected by water quality standards established pursuant to this subsection desires a revision in such standards, the Secretary may, after reasonable notice and a conference of representatives of appropriate Federal departments and agencies, interstate agencies, States, municipalities and industries involved, prepare regulations setting forth standards of water quality to be applicable to interstate waters or portions thereof. If, within six months from the date the Secretary publishes such regulations, the State has not adopted water quality standards found by the Secretary to be consistent with paragraph (3) of this subsection, or a petition for public hearing has not been filed under paragraph (4) of this subsection, the Secretary shall promulgate such standards.

“(3) Standards of quality established pursuant to this subsection shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. In establishing such standards the Secretary, the Hearing Board, or the appropriate State authority shall take into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.

Hearings.

“(4) If at any time prior to 30 days after standards have been promulgated under paragraph (2) of this subsection, the Governor of any State affected by such standards petitions the Secretary for a hearing, the Secretary shall call a public hearing, to be held in or near one or more of the places where the water quality standards will take effect, before a Hearing Board of five or more persons appointed by the Secretary. Each State which would be affected by such standards shall be given an opportunity to select one member of the Hearing Board. The Department of Commerce and other affected Federal departments and agencies shall each be given an opportunity to select a member of the Hearing Board and not less than a majority of the Hearing Board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. The members of the Board who are not officers or employees of the United States, while participating in the hearing conducted by such Hearing Board or otherwise engaged on the work of such Hearing Board, shall be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, (5 U.S.C. 73b-2) for persons in the Government service employed intermittently. Notice of such hearing shall be published in the Federal Register and given to the State water pollution control agencies, interstate agencies and municipalities involved at least 30 days prior to the date of such hearing. On the basis of the evidence presented at such hearing, the Hearing Board shall make findings as to whether the standards published or promulgated by the Secretary should be approved or modified and transmit its findings to the Secretary. If the Hearing Board approves the standards as published or promul-

gated by the Secretary, the standards shall take effect on receipt by the Secretary of the Hearing Board's recommendations. If the Hearing Board recommends modifications in the standards as published or promulgated by the Secretary, the Secretary shall promulgate revised regulations setting forth standards of water quality in accordance with the Hearing Board's recommendations which will become effective immediately upon promulgation.

"(5) The discharge of matter into such interstate waters or portions thereof, which reduces the quality of such waters below the water quality standards established under this subsection (whether the matter causing or contributing to such reduction is discharged directly into such waters or reaches such waters after discharge into tributaries of such waters), is subject to abatement in accordance with the provisions of paragraph (1) or (2) of subsection (g) of this section, except that at least 180 days before any abatement action is initiated under either paragraph (1) or (2) of subsection (g) as authorized by this subsection, the Secretary shall notify the violators and other interested parties of the violation of such standards. In any suit brought under the provisions of this subsection the court shall receive in evidence a transcript of the proceedings of the conference and hearing provided for in this subsection, together with the recommendations of the conference and Hearing Board and the recommendations and standards promulgated by the Secretary, and such additional evidence, including that relating to the alleged violation of the standards, as it deems necessary to a complete review of the standards and to a determination of all other issues relating to the alleged violation. The court, giving due consideration to the practicability and to the physical and economic feasibility of complying with such standards, shall have jurisdiction to enter such judgment and orders enforcing such judgment as the public interest and the equities of the case may require.

"(6) Nothing in this subsection shall (A) prevent the application of this section to any case to which subsection (a) of this section would otherwise be applicable, or (B) extend Federal jurisdiction over water not otherwise authorized by this Act.

"(7) In connection with any hearings under this section no witness or any other person shall be required to divulge trade secrets or secret processes."

(b) Paragraph (1) of subsection (d) of the section of the Federal Water Pollution Control Act herein redesignated as section 10 is amended by striking out the final period after the third sentence of such subsection and inserting the following in lieu thereof: "; or he finds that substantial economic injury results from the inability to market shellfish or shellfish products in interstate commerce because of pollution referred to in subsection (a) and action of Federal, State, or local authorities."

SEC. 6. The section of the Federal Water Pollution Control Act hereinbefore redesignated as section 12 is amended by adding at the end thereof the following new subsections:

"(d) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(e) The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and

Water standards
violations.

75 Stat. 208;
Ante, p. 907.
33 USC 466g.

70 Stat. 506.
33 USC 466i.

Records.

Audit of books,
etc.

examination to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act.”

75 Stat. 206.
33 USC 466d.

SEC. 7. (a) Section 7(f)(6) of the Federal Water Pollution Control Act, as that section is redesignated by this Act, is amended by striking out “section 6(b)(4).” as contained therein and inserting in lieu thereof “section 8(b)(4).”

33 USC 466e.

(b) Section 8 of the Federal Water Pollution Control Act, as that section is redesignated by this Act, is amended by striking out “section 5” as contained therein and inserting in lieu thereof “section 7”.

33 USC 466g.

(c) Section 10(b) of the Federal Water Pollution Control Act, as that section is redesignated by this Act, is amended by striking out “subsection (g)” and inserting in lieu thereof “subsection (h)”.

(d) Section 10(i) of the Federal Water Pollution Control Act, as that section is redesignated by this Act, is amended by striking out “subsection (e)” and inserting in lieu thereof “subsection (f)”.

33 USC 466h.

(e) Section 11 of the Federal Water Pollution Control Act, as that section is redesignated by this Act, is amended by striking out “section 8(c)(3)” and inserting in lieu thereof “section 10(d)(3)” and by striking out “section 8(e)” and inserting in lieu thereof “section 10(f)”.

Short title.

SEC. 8. This Act may be cited as the “Water Quality Act of 1965”.
Approved October 2, 1965.

Public Law 89-235

JOINT RESOLUTION

October 2, 1965
[S. J. Res. 98]

Authorizing and requesting the President to extend through 1966 his proclamation of a period to “See the United States”, and for other purposes.

“See the United States,” 1966.
Proclamation.

78 Stat. 388.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested (1) to extend through 1966 the period designated pursuant to the joint resolution approved August 11, 1964 (Public Law 88-416), as a period to see the United States and its territories; (2) to encourage private industry and interested private organizations to continue their efforts to attract greater numbers of the American people to the scenic, historical, and recreational areas and facilities of the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico; and (3) to issue a proclamation specially inviting citizens of other countries to visit the festivals, fairs, pageants, and other ceremonials to be celebrated in 1966 in the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

Publicity.

SEC. 2. The President is authorized to publicize any proclamations issued pursuant to the first section and otherwise to encourage and promote vacation travel within the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico, both by American citizens and by citizens of other countries, through such departments or agencies of the Federal Government as he deems appropriate, in cooperation with State and local agencies and private organizations.

National chairman.

SEC. 3. For the purpose of the extension provided for by this joint resolution, the President is authorized during the period of such extension to exercise the authority conferred by section 3 of the joint resolution approved August 11, 1964 (Public Law 88-416), and for such purpose may extend for such period the appointment of any person serving as National Chairman pursuant to such section.

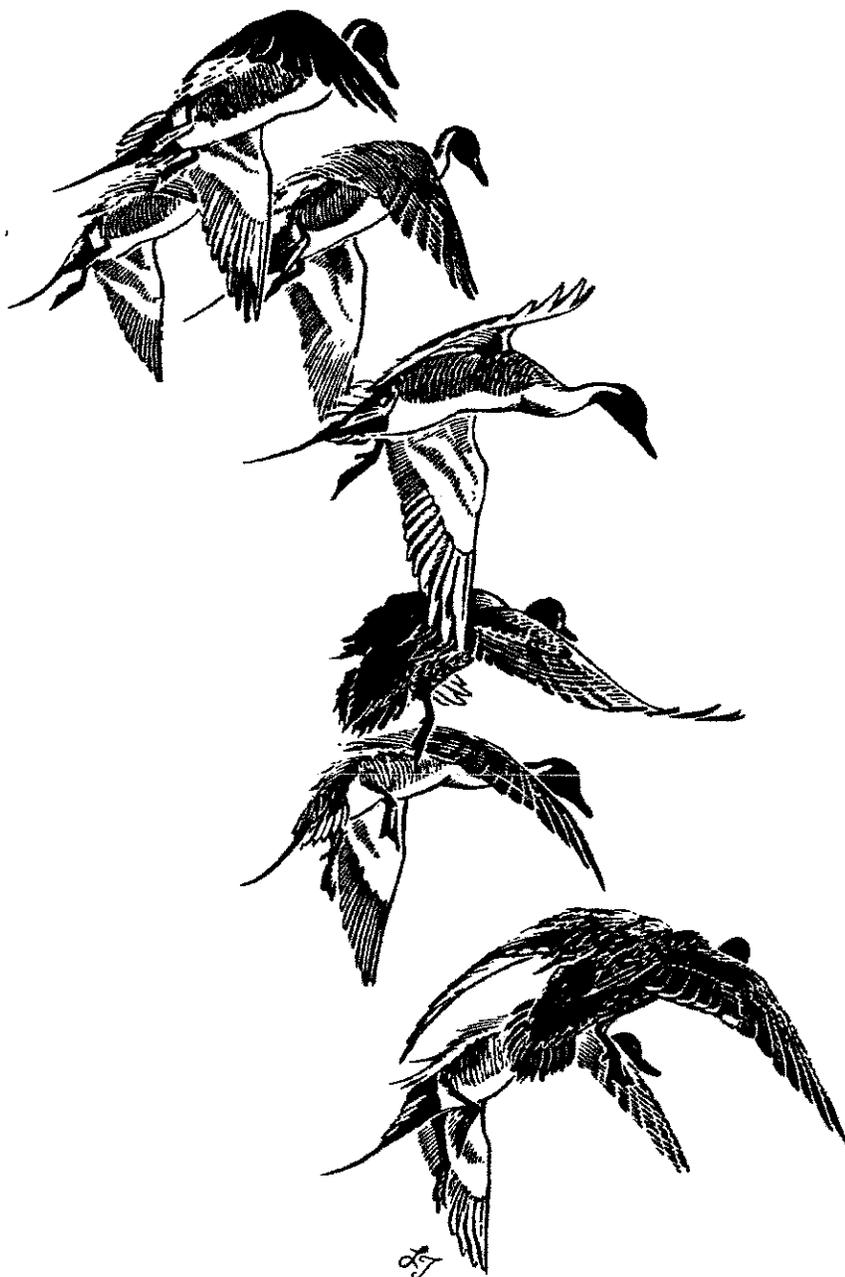
Approved October 2, 1965.

105	Sweetwater Gun Club	405	Sunrise Duck Club	532	Windmill Club	905	Mallard Farms
106	Ornbaun Kennels	406	Teal Duck Club	536	Marsh Club	906	Wreck Slough
108	Ambrose Ranch	407	Ibis Duck Club	537	Westwind Duck Club	907	River Dog's Retreat
110	SM Hunting Preserve	409	Franciscan Marshview	538	Merganser Farms	908	Montezuma Ranch
112	Suisun Farms	410	Gibson's Horseshoe	539	Tule Red	909	Montezuma Wetlands
113	Tule Farms Club	411	Greenlodge Club	601	Can-Can Duck Club	910	Dante Farms
116	Paoli Farms	412	Tule Hilton	604	Blacklock Ranch	912	Honker Bay Farms
117	Mallard Inn Duck Club	413	Sprig A Teal	605	Wohn Hunting Club	913	Ninelands
118	Windsong Duck Club	414	Roos Duck Club	607	Ducks A- Go Go	915	Delta Shoots
120	WCHB / Tank Pond	415	Arnold Ranch	608	Shurshot Gun Club	916	A & B Duck Club
121	DBI / Forrest Pond	417	Tule Belle	609	Black Dog Gun Club	917	Island
122	Gray Goose	418	Cygnus Gun Club	610	Westwind Duck Club	923	Lanzafame
123	Walnut Creek Gun Club	419	Miramonte Duck Club	611	The Sleeping Pintail	926	Webfoot Duck Club
124	Fat Hen	420	Antioch Golden Eye	613	Kirby Hills	927	Spoonbill Club
125	North End Club	422	DFG Family Club W.	618	Hidden Cove	928	Hi Gunner Club
126	Whistler Gun Club	423	The Family Gun Club	619	Schafer Farms	929	Riverside Gun Club
128	Mrs. Murphy's	424	Joice Island Gun Club	621	Stone Duck	930	Hit & Miss Club
129	WCHB / Peltier Property	425	California Farms	623	Frost Slough	931	Delta Farms
130	A.D. Seeno / Track	426	Tip End Gun Club	625	Pintail Ranch	932	Concord Farms
131	Jacksnipe Gun Club	501	The Island Club	627	Honegger Ranch	933	Newell's Club
132	Hollywood Duck Club	502	Grizzly Duck Club	631	DWR- Meins Landing	940	Spinner Island
133	Sheldrake Duck Club	503	Montezuma Gun Club	632	Sheriff Pond		
207	Lang Tule Ranch	504	Gum Tree Farms	633	Boles Pond		
211	Wings Landing	505	DUXRUS	634	Grizzly Hilton		
213	Rush Ranch	506	Four Winds Duck Club	635	DWR-Blacklock Restore		
219	Volanti Duck Club	507	Grizz/Fizz Club	701	Good Year Club		
220	Joice Island Mallard	508	Little West Wind Duck	702	Morrow Island Land Co		
302	Pickleweed Ponds	509	Garben Ranch	703	The Friendly Godfather		
303	Potrero Duck Club	510	The Honkers Club	704	Stone Enterprises		
304	Denverton Land Co	513	Grizzly King Gun Club	705	Mulberry Land Co		
305	Marianno's	514	Tree Slough Farms	706	Mallard Haven Club		
312	Denverton Ranch	515	Long Point Land Co	707	Goodyear Land Dvlpmt		
317	Brass Button 2	516	Bent Barrel Duck Club	715	Fleetside Farms		
318	Brass Button	517	Wild Turkey	721	Silver Sprig		
319	Stolte Farms	518	Mendoza Gun Club	801	Buckler Point, Inc		
320	Tule Meadows Club	520	Grizzly Ranch	802	Rich Island Gun Club		
321	Greenhead Duck Club	522	Peidmont Rod & Gun	803	St. Germain Duck Club		
322	Overlook Club	525	Balboa Farms	804	Sprig Farm		
323	Ducks & R	526	Flatlander	806	Grey Island Gun Club		
329	Flying D	527	Delta King	807	Wheeler Island		
330	Wildwing Duck Club	528	Grizzly Fairview Farms	901	San Souci Land Co		
331	Tonnesen Ranch	529	Sprigsville Ranch	902	Atlantis Gun Club		
402	Golden Gate Duck Club	530	Bul-Rush Farms	903	Blue Bird Club		
404	Cordelia Gun Club	531	Gang Bang Duck Club	904	Wingnuts		

CLUB # 801
5/2/80 MN

SUISUN

resource
conservation
district



Management

Plan

SCS-CONS-16
OCTOBER 1974

CONSERVATION PLAN MAP

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Owner Taylor, James F. Operator _____
County Solano State CA Date _____
Approximate acres 51.51 Approximate scale 1"=660'
Cooperating with Suisun Resource Conservation District _____
Plan identification 807 Photo number _____
Assisted by _____ USDA Soil Conservation Service



61705-29

SCS-CONS-15
OCTOBER 1974

SOIL MAP

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Owner Taylor, James F. Operator _____

County Solano State CA

Soil survey sheet(s) or code nos. _____ Approximate scale 1"=660'



Prepared by U.S. Department of Agriculture, Soil Conservation Service cooperating
with Suisun Resource Conservation District



61705-29

CLUB #801

ANNIE MASON POINT CLUB

RECEIVED
NOV 15 1984

LAND USE SUMMARY

Managed wetland	30 ac.
Upland area	6 ac.
Tule berm	<u>15</u> ac.
TOTAL	51 ac.

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

PRESENT CLUB CONDITIONS

WATER MANAGEMENT

Annie Mason Point Club is a small lone club located on Buckley Island. It is contained within a single levee surrounded by Grizzly Bay to the north and Suisun Cutoff to the south. Structure A on the east side of the club functions as the main flood gate and brings water into the club via a perimeter ditch system. A system of interior ditches running from south to north further distributes water to the pond. Structure B is used to drain the club into Grizzly Bay. Two small check dams (C and D) are located in the perimeter ditch. These structures aid in circulation by putting a head on the inlet water and forcing it to circulate across the club in a south to north direction. Removing the boards in the dam enables the ditch to drain.

VEGETATION

An on-club survey in 1976 found the club to be composed predominantly of olney and hardstem bulrush in the lower areas and saltgrass in the higher areas. The 1978 CA Dept. of Fish and Game aerial survey reported tule growth intermixed with the above vegetation. None of these plants has a relatively high use and selection value for waterfowl.

Olney and hardstem bulrush are both sod forming perennials which grow along sloughs and in ditches containing water most of the year. They will invade ponds which are shallowly flooded year round and are indicative of fairly fresh water conditions. Tules are also common in permanent ponds. Their increase was probably due to the club's lack of water control at the time.

SUMMARY

Prior to 1978, Annie Mason Point Club's vegetation largely consisted of non-waterfowl food plants. This was likely due to the club's lack of water control at the time. Since then, the situation has greatly improved and the club reports that it now has the water control structures and tight levees necessary for proper water management.

FLOOD/DRAIN EVALUATION

Due to limited access, an elevation survey was not done for this club. That being the case, the club's flood and drain capability could not be determined. However, using some assumptions, it is apparent that as the ponded area is very small, gates A and B would likely have to be only 24" in diameter to service this club effectively. Although structure B, the drain gate, must be set low enough to provide subsurface drainage of the pond.

CLUB IMPROVEMENTS

WATER MANAGEMENT

Needed Improvements: It is, first of all, necessary that the club follows a

regular program of water management; in this case the alkali bulrush program is recommended to promote such growth as well as fat hen and brass buttons. Considering the generally poorer quality water in Suisun Bay, effective spring leach cycles performed within 30 days are required to establish and maintain suitable habitat.

Proper water control necessitates inspection and maintenance of levees, ditches, and water control structures. Ditches need to be kept clear of vegetation blockages or silt build-ups to allow circulation and drainage. For effective drainage, ditches should be at least 2.5 ft. deeper than the average pond bottom elevation at the controlling tide gate, sloping to 1.5 ft. deep at the most remote point in the pond. Water control structures should also be kept in working order. Levees require frequent inspection and attention to prevent major breaks from occurring. See the enclosed list of standard recommendations for more information on the maintenance and repair of water control facilities.

VEGETATION MANAGEMENT

Needed Improvements: The dense growth of undesirable vegetation in the pond needs to be reduced by burning and/or discing followed by flooding according to the water management schedule. Removing the old vegetation and turning over the soil provides a seed bed for the establishment of new vegetation which is more preferred by waterfowl.

Emergent pond vegetation should be mowed to create open pond areas which are attractive to over-wintering waterfowl in the Suisun Marsh. The extent and pattern of mowing is left to the desires of the club. Close-cutting of tules and olney bulrush prior to fall flooding is an effective method of setting back their growth.

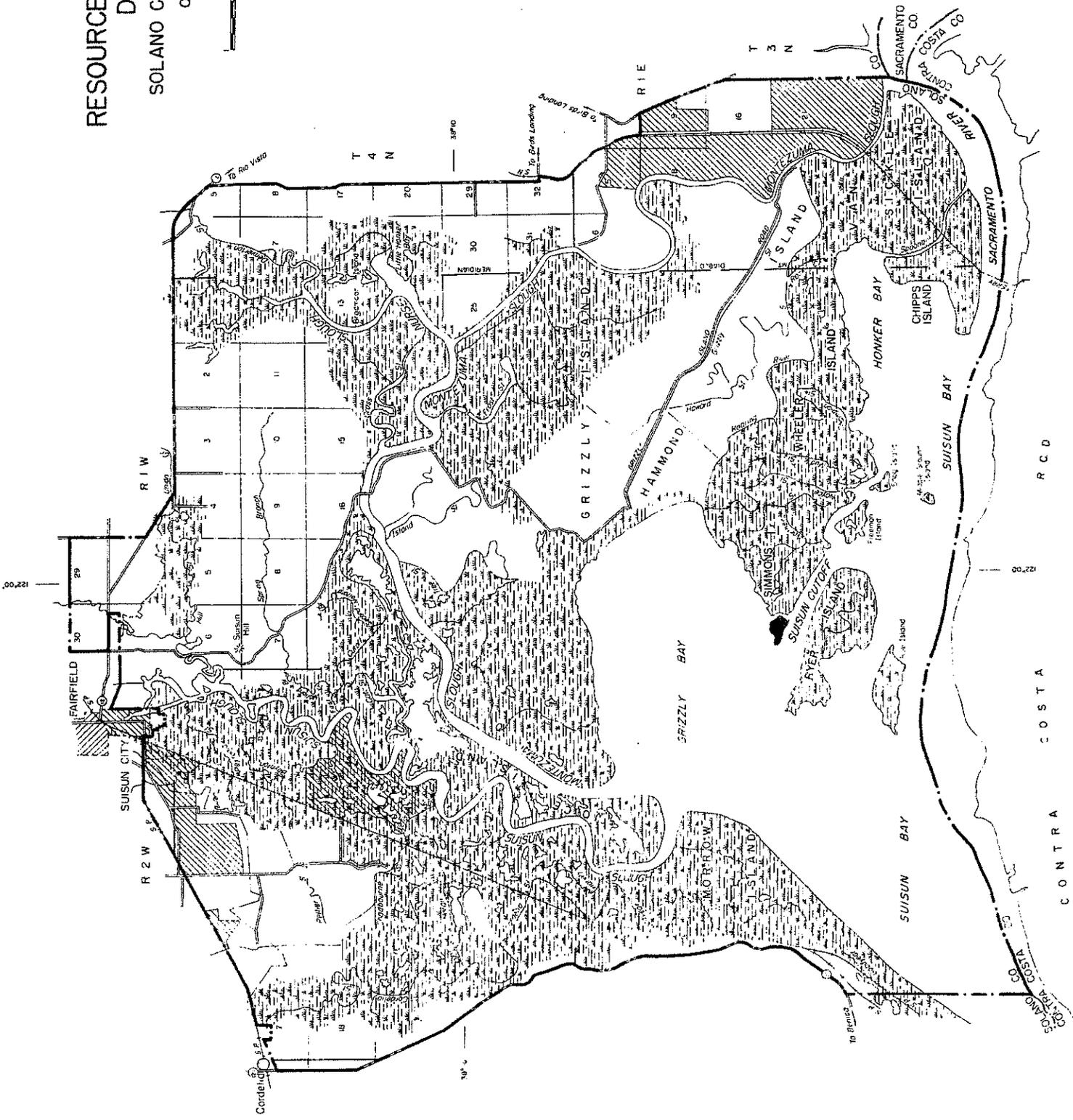
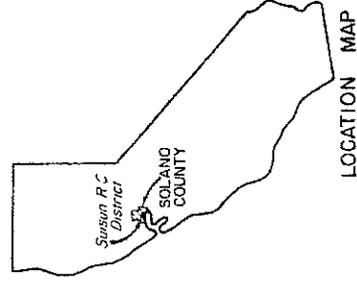
Levee vegetation should be mowed, as necessary, to facilitate access for maintenance reasons. This should be done after June 1st to lessen disruption of pheasant and waterfowl nesting.

SUISUN RESOURCE CONSERVATION DISTRICT

SOLANO COUNTY, CALIFORNIA
OCTOBER 1979



LEGEND
 Excluded Area
 District Boundary



SOIL and CAPABILITY MAP SUMMARY

erator: _____ Date: _____

d 1- Y t	Symbol on Map	Soil Name	Effec- tive Depth	Soil Profile			Average Slope in %	Erosion Status	Suitable Land Uses or Crops	Limiting Factors or Remarks
				Texture	Surface	Subsoil				
-1	Ja	Joice Muck	+60"	clayey muck	clayey muck	clayey muck	0-1%	slight	1) Wildlife, wet- land habitat. 2) Recreation.	1) Rooting depth re- stricted by high water table. 2) Requires drainage and leaching of soil salts for proper management. 3) Levees and tidegates are necessary for water control. 4) Only salt tolerant vegetation should be managed for.
Iw-1	Td	Tidal Marsh	-----variable-----	-----variable-----	-----variable-----	1-2"	0-1%	NONE	1) Wildlife wet- land habitat.	1) Strongly saline land type. 2) Mud flats, sub- ject to tidal inunda- tion.

*A.W.C. - Available Water Holding Capacity for the entire soil profile

CONSERVATION PLAN MAP

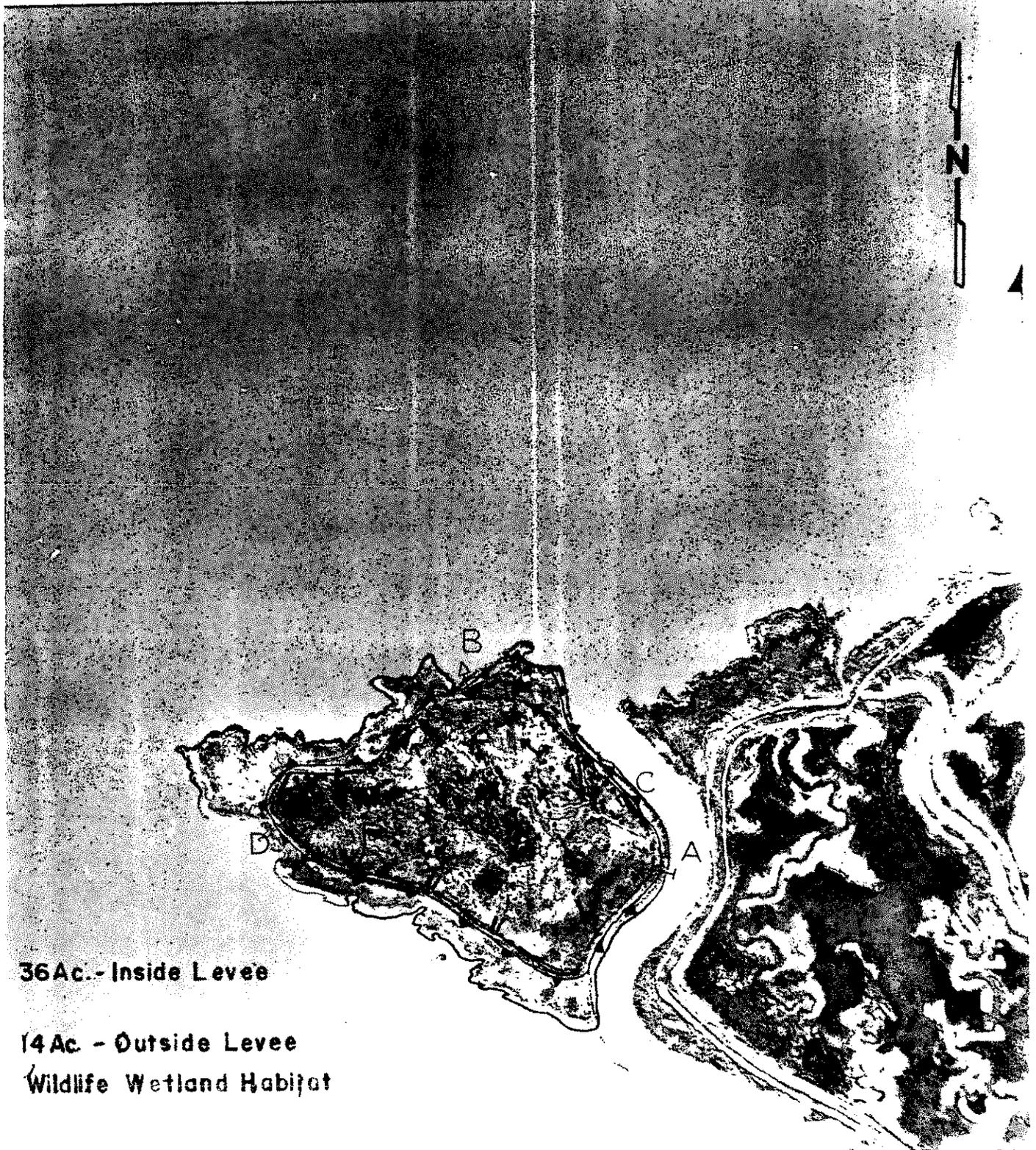
Prepared by SOIL CONSERVATION SERVICE * UNITED STATES DEPARTMENT of AGRICULTURE
cooperating with



OWNER
OPERATOR

FARM NO.
SCALE
PHOTO NO.

DATE
ACRES



36 Ac. - Inside Levee

14 Ac. - Outside Levee

Wildlife Wetland Habitat

RECOMMENDED MANAGEMENT FOR ALKALI BULRUSH

Alkali Bulrush has been found to have the highest overall use and selection values of the 35 food species records (Mall, 1969) in the Suisun Marsh.

The following Water Management Schedule has been developed to produce dominant stands of alkali bulrush and subdominant stands of other important waterfowl food plants such as fat-hen and brass buttons. This management practice somewhat retards the growth of other less desirable plants such as tules, cattails, pickleweed, and saltgrass. To establish stands of alkali bulrush from seed in areas where it does not presently exist, the procedures set forth in the Department of Fish and Game bulletin entitled "Propagating Alkali Bulrush" should be followed.

It is important to remember that the plant composition of the Suisun Marsh is related more to water management than any other single factor (Mall, 1969). The length of soil submergence and levels of salinity in the soil are factors which can be managed to maximize the production of waterfowl food plants. The schedule as presented here, is meant to be used as a guide to maintain optimum conditions for the production of alkali bulrush seed. For a more complete and detailed discussion of the Water Management Schedule, see the California Department of Fish and Game publication "Waterfowl Habitat Management in the Suisun Marsh".

NOTICE:

The SCMAD has participated in the preparation of this management plan and endorses this Water Management Schedule to minimize the production of mosquitoes. This plan is suitable for use on private duck club land and all other lands owned by public agencies managed as waterfowl habitat, and in normal weather cycles will limit the production of mosquitoes if water levels are managed properly. However, if adverse variations in water levels occur, SCMAD may take action to abate any production of mosquitoes pursuant to the procedures set forth in the California Health and Safety Code Sections 2274 et seq. at the property owners expense whenever larvae and adult mosquitoes are found to be present in sufficient densities to warrant control procedures.

HUNTING SEASON

- September Begin filling ditches in September only if water can be circulated in the ditches without flowing into the ponds. The ditches must have a minimum width (18") and depth (24") to allow adequate circulation of the water. Do not flood any pond surface.
- October Flood the ponds as rapidly as possible to the desired shooting depth of 8-12 inches. Maintain this water level for the duration of the duck hunting season. Circulate water through the ponds with inlet and outlet gates set to allow maximum flow through all ponds during the season. The Solano County Mosquito Abatement District usually authorizes the flooding of ponds three weeks prior to the opening of the waterfowl season. Landowners will be notified each year of the exact date.
- Nov-Dec Continue to circulate.

LEACHING CYCLES

- January Begin draining ponds at or before the end of the hunting season. Continue to drain the ponds until the water level in the ditches is 12" below the pond bottoms. This should be accomplished within 20 days. If this level is reached in less than 20 days, begin to reflood immediately.
- February The first drain should be completed by early February depending on rainfall and delta outflow conditions.
- Flood: Flood the fields and ponds to shooting depth, (approximately 8-12"). This should be accomplished within 10 days. Many clubs can flood much faster than this. If shooting level is reached sooner than 10 days, begin to drain immediately. If there is a problem lowering the water to a level 12" below the pond bottoms within 20 days, use any days saved during the flooding period to increase the length of the drain period. Flooding and draining should be accomplished within 30 days.
- Drain: Repeat the drain as before making sure that the water level in the ditches has been drawn down 12" below the pond bottoms.
- March-April Repeat Flood-Drain Cycle. Flood to 1/2 shooting level (approx. 4-6"). This cycle must be completed as quickly as possible. For mosquito prevention, it is important that the pond bottom not be allowed to dry out prior to reflooding for the set-set cycle. Ideally this drain cycle should be completed and ponds reflooded and water levels stabilized and circulating prior to April 1. If significant number of mosquitoes are produced on clubs draining and flooding during April, aerial spraying by Solano County Mosquito Abatement District may be necessary at the expense of the club.

SEED-SET CYCLE

April-June

As soon as 2 leaching cycles have been completed, flood to 1/2 shooting level (approx. 4-6"). Stabilize at this level and continue circulating until summer drainage. Be sure to maintain a constant water level in the ponds for the entire cycle. It has been shown that in order to achieve a good seed-set bulrush stands must be flooded during this period. As soon as bulrush has seed-set or not later than June 1, begin final drainage.

MAINTENANCE

Summer

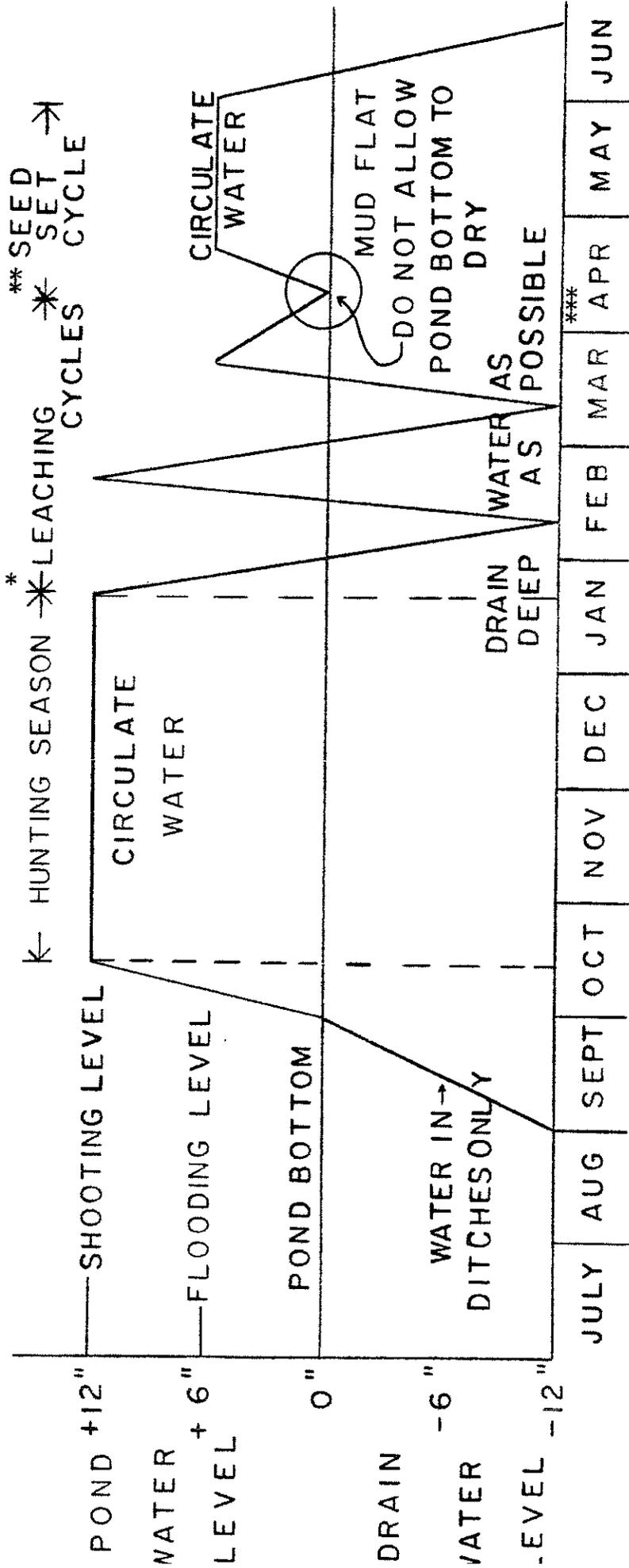
The summer drying period will retard the invasion of undesirable plants and will allow necessary maintenance and field work.

September

Mow to create open water areas. For a discussion of mowing techniques, see the Department of Fish and Game Bulletin: "Waterfowl Habitat Management in the Suisun Marsh".

ALKALI BULRUSH

WATER MANAGEMENT SCHEDULE



* The leaching cycles are calculated using a 10 day flood and 20 day drain period, however, many clubs can accomplish one total flood and drain cycle in less than 30 days. The flushing cycles should be completed as fast as possible, however, do not cut short the 20 day drain period unless the water level in the ditches 1' below pond bottom.

** Ideally, stabilized water levels of the seed set cycle should be accomplished before April 1.

*** Any duck club planning to fluctuate pond water levels in April must notify the Solano County Mosquito Abatement District of their intentions. April is the beginning of the mosquito breeding season. Extra care is essential to insure that the pond bottoms are not allowed to dry out during April prior to reflooding for the seed-set cycle.

RECOMMENDED MANAGEMENT FOR FAT HEN

Fat hen is an annual herb that is a prolific seed producer and preferred waterfowl food plant. It grows best during the spring and summer on disturbed soils. Fat hen does not compete well with perennials and will require discing every 4-5 years in order to maintain a dominant stand. Fat hen is recommended on clubs that are relatively level, that have firm, well-drained soils and that have a manager to insure efficient Water Management. The following Water Management Schedule has been developed to produce a dominant stand of fat hen, while suppressing less desirable plants such as tules, cattails and saltgrass. This schedule may support additional stands of brass buttons. Plant composition in the Suisun Marsh is related more to Water Management than any other single factor (Mall, 1969). The length of the soil submergence and salinity are factors which can be managed to maximize the production of waterfowl food plants.

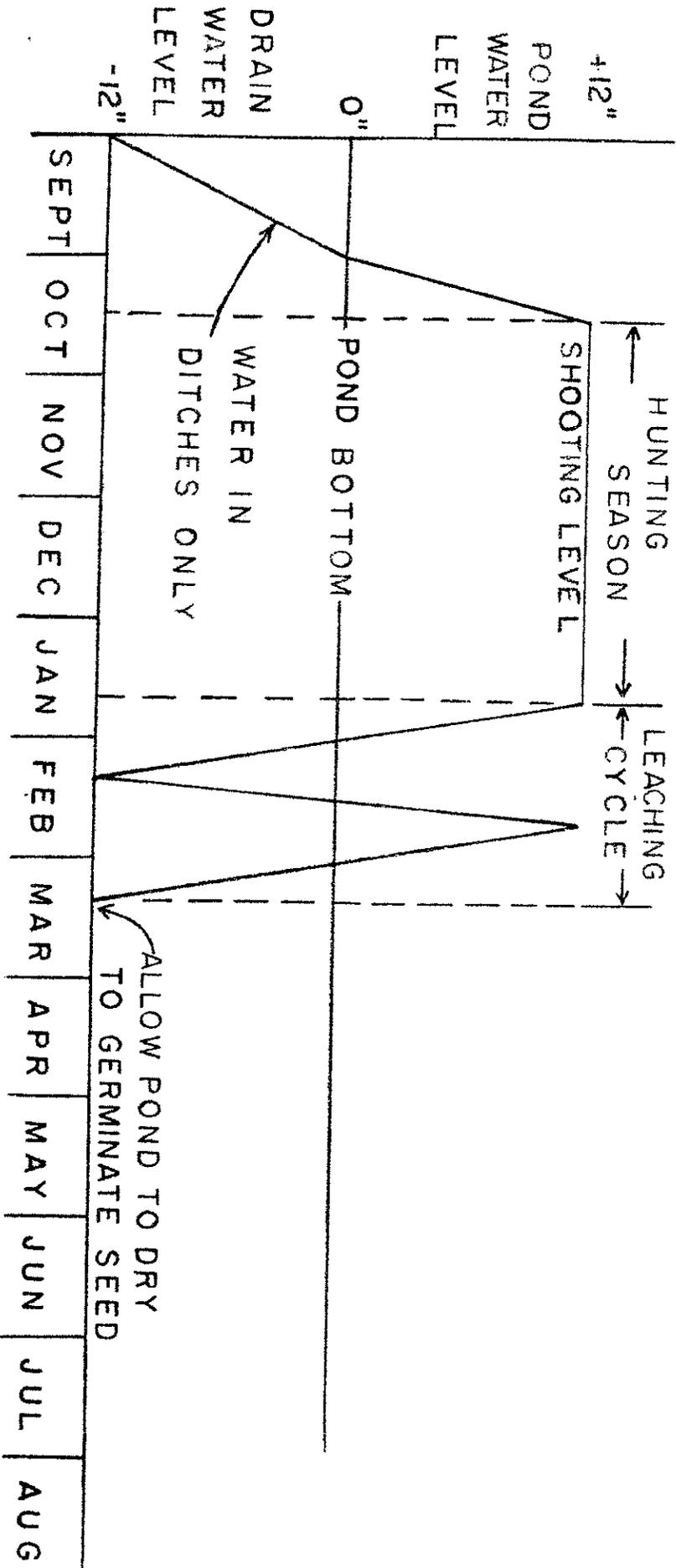
The schedule as presented here, is meant to be used as a guide to maintain optimum conditions for the production of fat hen seed. For a more complete and detailed discussion of the Water Management Schedule, see the Department of Fish and Game Publication "Waterfowl Habitat Management in the Suisun Marsh".

NOTICE:

The SCMAD has participated in the preparation of this management plan and endorses this Water Management Schedule to minimize the production of mosquitoes. This plan is suitable for use on private duck club land and all other lands owned by public agencies managed as waterfowl habitat, and in normal weather cycles will limit the production of mosquitoes if water levels are managed properly. However, if adverse variations in water levels occur, SCMAD may take action to abate any production of mosquitoes pursuant to the procedures set forth in the California Health and Safety Code Sections 2274 et seq., at the property owners expense whenever larvae and adult mosquitoes are found to be present in sufficient densities to warrant control procedures.

FAT HEN

WATER MANAGEMENT SCHEDULE



WETLANDS MAINTENANCE MANAGEMENT REPORT
SUISUN RESOURCE CONSERVATION DISTRICT

Date: 1-29-90

Club Name: Annie Mason Pt.

Owner or

Acres in

Manager: Tim Taylor

Ownership: 51.5

Phone: (415) 758-2095

Ownership No. 801

NOTE: YOU MUST SUBMIT A MAP OF YOUR PROPERTY SHOWING WORK LOCATIONS. SUITABLE MAPS ARE AVAILABLE FROM ASSESSOR'S OFFICE.

Type of Work	# of Units	Size or Acreage	Cubic Yards	Linear Feet	Work Schedule		Comments
					Start	Complete	
Clearing Ditches	XXXXX	XXXXXXX	1000	Approx. 1200	As soon as possible	Oct. 1	1) upon EXISTING LOUERS
Construct New Ditches	XXXXX						1)
Interior Levee Repair	XXXXXX	XXXXXXX	2000	500'	"	"	2) From EXISTING Ditch
Exterior Levee Repair	XXXXXX	XXXXXXX	2000	750'	"	"	2) Suisun CUT + ANNIE MASON Suisun Bay
Road Maintenance	XXXXXX	XXXXXXX					2)
Grading Pond Bottoms	XXXXXX						
New Culverts			XXXXXX	XXXXXXX			
Repair-Replace Culverts			XXXXXX	XXXXXXX			
Water Control Structures			XXXXXX	XXXXXXX			3)
Install New Blinds		XXXXXXX	XXXXXX	XXXXXXX			
Relocate Blinds		XXXXXXX	XXXXXX	XXXXXXX			
Other Work (Specify)							

1) State where material will be placed 2) State source of material 3) State type of structure

GRIZZLY BAY

SIMMONS ISLAND

MASON SLOUGH

BUCKLER PTE
51.5 ACRES

SUISUN CUT OFF

Interior
Levee Repair

Interior
Levee Repair

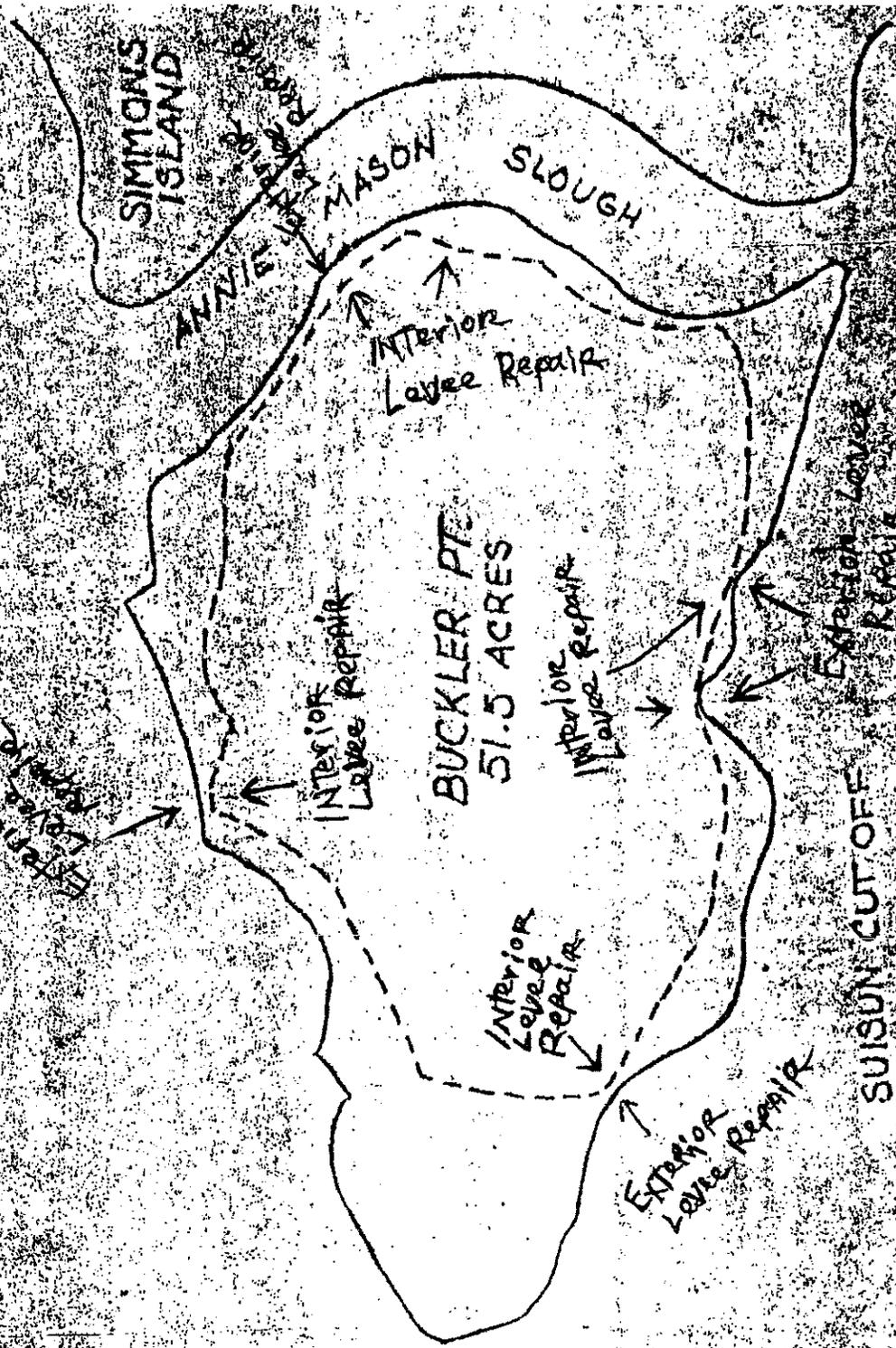
Interior
Levee Repair

Interior
Levee Repair

Exterior
Levee Repair

Exterior Levee
Repairs

Interior
Levee Repair



WORK PERMITS

1. Any levee work, ditch work, or structure placement or repair must be covered by an application for such work under the Suisun Resource Conservation District Blanket Permit issued by the U.S. Corps of Engineers, San Francisco District, and San Francisco Bay Conservation and Development Commission. Permit applications should be made to the Suisun Resource Conservation District by March 30th for the upcoming summer.
2. The Solano County Mosquito Abatement District has been issued a Blanket Permit by the U.S. Corps of Engineers, San Francisco District and San Francisco Bay Conservation & Development Commission thru the California Department of Health Services.

The SCMAD has ditching equipment for the construction and cleaning of small (18" X 18") spreader ditches. Application for ditch work to be done by the SCMAD must be filed in their office by September 15th of the year preceeding that in which the ditch work is planned.

Further information concerning the SCMAD ditch work is provided in the following page.

3. No burning is allowed without a permit. A burning permit must be obtained through the California Department of Fish & Game in Yountville and the Fire Warden's office in Fairfield. The Bay Area Pollution Control District prohibits any person from burning any area more than once in any two-year period.

Addresses:

1. Suisun Resource Conservation District
555 Veterans Blvd.
Redwood City, CA 94063
Tel: (415) 365-3072
2. Solano County Mosquito Abatement District
P.O. Box 304
714 Main Street
Suisun, CA 94585
Tel: (707) 425-5768
3. Department of Fish & Game
P.O. Box 47
Yountville, CA 94599
Tel: (707) 944-2443
4. Fire Warden
500 Texas Street
Fairfield, CA 94533
Tel: (707) 425-5470

SOLANO COUNTY MOSQUITO ABATEMENT DISTRICT (SCMAD) DITCH WORK

1. Cost of ditching equipment including operator is \$30.00 per hour. There is no additional charge for transporting equipment from portal to portal.
2. The SCMAD Blanket Permit allows only 5000 lineal feet of new ditch per year to be constructed for any one property.
3. There is no limitation on the number of lineal feet of cleaning existing ditches.
4. Ditching equipment will construct and clean only a 18" x 18" ditch. Depending on the density of vegetation and soil types the ditching equipment can dig about 500 - 1000 lineal feet per hour.
5. If vegetation (tules, bulrushes, etc.) is too dense the vegetation then must be mowed before the ditcher can work.
6. Because of siltation and vegetation growth in the ditches, the SCMAD recommends cleaning every 3 or 4 years.
7. If property owners desire to have SCMAD construct new ditches, they must know the number of ditches to be constructed and the total lineal feet for each ditch when submitting a work order. The SCMAD Blanket Permit runs from January thru December of each year. Work orders must be submitted to the SCMAD by September 15th for work planned for the following year.

RECORD OF COOPERATOR'S DECISIONS
AND PROGRESS IN APPLICATION

COOPERATOR James Taylor
ASSISTED BY Larry Norris
DATE 7/29/76

FIELD NUMBER	PLANNED		APPLIED		LAND USE AND TREATMENT
	AMOUNT	YEAR	AMOUNT	MONTH AND YEAR	
					LAND USE SUMMARY
					FIELD # ACRES LAND USE
					1 52 Wildlife (Wetland Habitat)
					<u>WILDLIFE MANAGEMENT SYSTEM (WETLAND HABITAT)</u>
					The resulting end product of Marsh management is habitat. The type and quality of habitat produced is the result of a number of variables, included among those are Wildlife Management, Soil Management, Water Management, Excess water removal, erosion control and irrigation.
					<u>WILDLIFE MANAGEMENT SUBSYSTEM</u>
					<u>Wildlife (Wetland Habitat) Management</u>
					This club will be managed in an attempt to maximize the carrying capacity of the club for waterfowl. This includes providing high quality food plants such as alkali bulrush, lambquarters and brass buttons, and restricted resting areas and loafing sites.

RECORD OF COOPERATOR'S DECISIONS
AND PROGRESS IN APPLICATION

COOPERATOR James Taylor
ASSISTED BY Larry Norton
DATE 7/29/76

FIELD NUMBER	PLANNED		APPLIED		LAND USE AND TREATMENT
	AMOUNT	YEAR	AMOUNT	MONTH AND YEAR	
1	1000 ⁺	Fall 76	4775 ⁺ prior to 76		<p><u>WATER MANAGEMENT SUBSYSTEM</u></p> <p><u>Dikes and Levees:</u></p> <p>Existing exterior levees which need work immediately, in order to enable complete drainage and control of flushing and irrigation water will be repaired. Areas in need of work are scattered, but lie primarily on the North side of the island.</p>
1	52	76			<p><u>Irrigation Water Management:</u></p> <p>Irrigation Water Management as outlined in the enclosed Water Management Schedule will be followed after repair of the Dikes and Levees and installation of adequate water control structures to do the job (See Irrigation Subsystem).</p>
					<p><u>IRRIGATION SUBSYSTEM</u></p>
1	2	77			<p><u>Structures for Water Control:</u></p> <p>Two water control structures will be installed to circulate water and irrigate the Duck Ponds (for structure sizes and capabilities refer to</p>

GENERAL INFORMATION

This plan covers the Annie Mason Pt. Club located on Buckley Island. The property is managed for Wildlife Habitat (primarily Wetland) and recreation.

A run down of the soil characteristics is given on the enclosed Soil and Capability Map Summary. Generally speaking Joice muck and Tamba mucky clay are strongly saline soils 15-58 mmhos with moderately alkaline layers. These layers become acid if the soil is allowed to dry, and cracks appear. The water table varies but is usually less than 30 inches below the surface in mid-summer. Dominant vegetation consists of perennial sedges and herbs.

Existing vegetation on the club consists predominantly of Olney bulrush and hardstem bulrush, on lower areas, and saltgrass on the higher. All of these plants have a relatively low use and selection value for waterfowl. Olney and hardstem bulrush are both sod forming perennials which grow along sloughs and in ditches which contain water most of the year. They will invade ponds which are shallow flooded year round. The presence of these two hydrophytic plants indicates fairly fresh conditions; therefore, changing the habitat to a highly productive and selective one for waterfowl should be relatively easy.

The main problem hampering proper management of the club is water control. It is important to remember that a marsh is actually an intermediate successional stage between an upland and a lake. Proper marsh management simply accentuates this intermediate state and perpetuates a disturbed site

condition. This allows the high seed producing perennials such as Brass-button and alkali bulrush and the annual such as Larbsquarter to invade and dominate the marsh. Water control is the key.

The existing levee system is in poor condition and needs work including the installation of irrigation structures. If this is done adequate water control will be achieved to properly manage the marsh for waterfowl.

Once the club can be drained effectively the Olney and hardstem bulrush should be set back by first mowing and then disking. Extreme caution should be exercised when using fire around Joice muck soils, this soil tends to catch on fire. After the perennial growth has been set back physically in early spring, alkali bulrush should be seeded at the rate of 30#/AC. Seeding should take place by April thus eliminating the first couple flush cycles in the Water Management schedule the first year, while the club is dried out and disked.

WETLANDS MAINTENANCE MANAGEMENT REPORT
SUISUN RESOURCE CONSERVATION DISTRICT

Date: 1-29-90

Club Name: Annie Mason Pt.

Owner or

Manager: Jim Taylor

Acres in

Ownership: 51.5

Phone: (415) 758-209

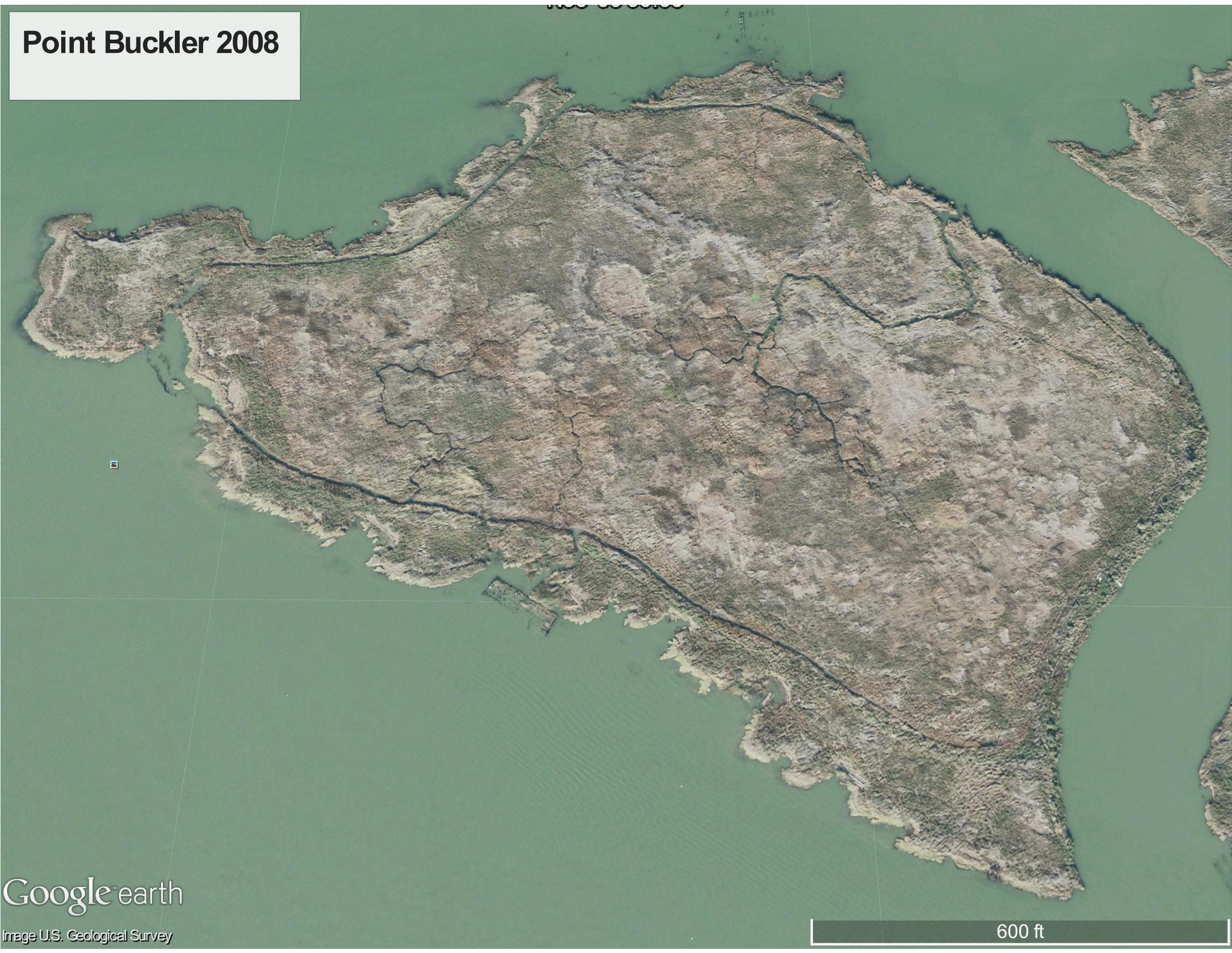
Ownership No. 801

*NOTE: YOU MUST SUBMIT A MAP OF YOUR PROPERTY SHOWING WORK LOCATIONS. SUITABLE MAPS ARE AVAILABLE FROM ASSESSOR'S OFFICE.

Type of Work	# of Units	Size or Acreage	Cubic Yards	Linear Feet	Work Schedule		Comments
					Start	Complete	
Clearing Ditches	XXXXX	XXXXXX	1000	Approx. 1200	As soon as possible	Oct. 1	1) Upon Existing Land
Construct New Ditches	XXXXX						1)
Interior Levee Repair	XXXXX	XXXXXX	2000	500'	"	"	2) From Existing Ditch
Exterior Levee Repair	XXXXX	XXXXXX	2000	750'	"	"	2) Suisun Cut + Annie M Suisun Bay
Road Maintenance	XXXXX	XXXXXX					2)
Grading Pond Bottoms	XXXXX						
New Culverts			XXXXXX	XXXXXX			
Repair-Replace Culverts			XXXXXX	XXXXXX			
Water Control Structures			XXXXXX	XXXXXX			3)
Install New Blinds		XXXXXX	XXXXXX	XXXXXX			
Relocate Blinds		XXXXXX	XXXXXX	XXXXXX			
Other Work (Specify)							

1) State where material will be placed 2) State source of material 3) State type of structure

Point Buckler 2008



Google earth

Image U.S. Geological Survey

600 ft

BRISCOE IVESTER & BAZEL LLP

155 SANSOME STREET
SEVENTH FLOOR
SAN FRANCISCO CALIFORNIA 94104
(415) 402-2700
FAX (415) 398-5630

Lawrence S. Bazel
(415) 402-2711
lbazel@briscoelaw.net

25 September 2015

By E-Mail and Mail

Bruce H. Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Cleanup and Abatement Order R2-2015-0038
Point Buckler LLC

Dear Mr. Wolfe:

On behalf of Point Buckler LLC, we are responding to paragraph 8 of Cleanup and Abatement Order R2-2015-0038 (the "Order"), which reads as follows:

No later than 14 days from the date of this Order, the Discharger is required to acknowledge in writing its intent to reimburse the State for cleanup oversight work as described in the Reimbursement Process for Regulatory Oversight fact sheet provided to the Discharger with this Order, by filling out and returning the Acknowledgement of Receipt of Oversight Cost Reimbursement Account Letter or its equivalent, also provided with this Order.

It is not clear to us what this provision means. Water Code § 13304 provides that the Regional Board may recover "reasonable costs actually incurred" *after* waste is cleaned up or its effects abated:

If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by a governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency

Bruce H. Wolfe

25 September 2015

Page 2

to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

(Water Code § 13304(c)(1).) The Regional Board, therefore, does not appear to have authority to require a discharger to reimburse it for costs incurred *before* "the waste is cleaned up or the effects of the waste are abated". Please correct us if our interpretation is wrong, or if there is other authority we have not considered.

When paragraph 8 of the Order says that "the Discharger is required to acknowledge in writing its intent to reimburse the State", the Order could be interpreted as requiring that Point Buckler LLC *must* agree *now* to reimburse the Regional Board. This interpretation would invalidate at least part of the Order as an act in excess of the Regional Board's authority.

We believe the better interpretation is that paragraph 8 of the Order includes a voluntary request. In response, Point Buckler LLC acknowledges that it may, as part of an appropriate legal process (as discussed in more detail below), be found liable and required to reimburse the Regional Board for oversight costs. Point Buckler LLC would like to discuss the reimbursement issue with you and your staff. Please let us know if you agree that paragraph 8 should be interpreted as a voluntary request.

Paragraph 8 specifically requires that a form be returned, and we are attaching a signed copy of the form. Because Mr. Sweeney is not available to sign the form, I have signed it for him. As you may have noticed, the language of the form does not conform to the language of the Order. We are returning the form, attached as Exhibit 1, because it is our intent to comply with the Order as we proceed through the legal process. Please let us know if you believe our actions do not constitute compliance, and then give us an opportunity to come into compliance. Please do not send us any bills pending resolution of the legal issues.

We have reviewed the letter dated 18 September 2015 from Wilson Wendt of Miller Starr Regalia (whom we are replacing on this matter) to you. That letter respectfully requests a hearing on the Order. We have also reviewed the e-mail dated 23 September 2015 from Agnes

Farres of your staff responding to Mr. Wendt concluding that “there is no action to take before the Board at this time” and that “it would be more appropriate to schedule a meeting with staff”.

We do not understand why a hearing has not been held and is not being held for the Order. “Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest.” (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 621.) Here there cannot be any doubt that the Order deprives Point Buckler LLC of a significant property interest. In July 2015, in the *West Side Irrigation District* case (copy attached as Exhibit 2), the Sacramento Superior Court invalidated letters sent out by the State Board—letters that commanded far less than the Order—on the grounds they were issued “without any sort of pre-deprivation hearing”. (Exhibit 2 at 5.) The court distinguished between letters that are “coercive in nature” (*id.* at 2), which require a hearing, and purely informational letters, which do not. Here the Order is indisputably coercive in nature. The court concluded that “[e]very day the Letter remains in its current form constitutes a violation of those constitutional rights.” (*Id.*)

State Board Order No. WQ 86-13, *In the Matter of the Petition of BKK Corporation*, acknowledges the need for a post-order hearing:

The Porter-Cologne Water Quality Control Act...does not require notice and an opportunity to be heard before issuance of a cleanup and abatement order. Due process is provided by an opportunity for a hearing after the order is issued.

(*Id.* at 4.)

Where a state’s interest is sufficient compelling, the requirements of procedural due process may be satisfied by a hearing provided after issuance of an administrative order....

(*Id.* at 6.)

We therefore once again request a hearing. If that request is denied, please let us know why the Regional Board believes that no hearing is required.

We also do not understand how the due-process requirements for a fair tribunal, including the requirements for separation of functions and the prohibition on ex-parte communications, have been implemented for the Order. (See *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 736-739.) *Morongo* describes the extensive

BRISCOE IVESTER & BAZEL LLP

Bruce H. Wolfe

25 September 2015

Page 4

procedures used by the State Board to satisfy these requirements. (*Id.* at 735-736.) Please let us know how these requirements are being satisfied here. Who is on the prosecution team, and who is on the advisory team? Have any procedures been put in place to prohibit ex parte communications between them?

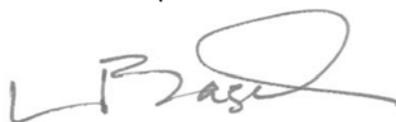
We also note that the Order invokes the Regional Board's authority under Water Code § 13267, which requires that the Regional Board "shall identify the evidence that supports requiring that person to provide the reports." (Water Code § 13267(b)(1).) Although the Order includes findings, there is no reference whatsoever to the evidence on which these findings is based. We would like to understand what evidence your staff relied on in preparing the Order, and will be submitting a Public Records Act request. Nevertheless, we would like a hearing so that your staff can present the Regional Board's evidence to an impartial fact finder, and we can rebut it.

We are sorry to have to proceed this way, but must protect our legal rights. The deadlines in the Order are much too short to resolve all the issues that need to be resolved. We therefore request that all deadline in the Order be postponed for 60 days, so that we can focus our efforts on responding to the Regional Board's needs rather than on legal proceedings to obtain a stay.

The e-mail from Ms. Farres proposes a meeting with Keith Lichten, Tamarin Austin, and Bill Hurley, and we agree that a meeting is a good idea. We will be following up on that proposal.

Thank you very much for your consideration of these questions, comments, and requests, and please call with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Bazel", with a large, stylized flourish at the end.

Lawrence S. Bazel

cc: A. Farres (by e-mail)
K. Lichten (by e-mail)
A. Tamarin (by e-mail)
B. Hurley (by e-mail)

EXHIBIT 1

ATTACHMENT 3

**ACKNOWLEDGMENT OF RECEIPT OF
OVERSIGHT COST REIMBURSEMENT ACCOUNT LETTER**

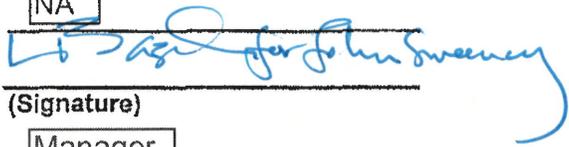
I, John Sweeney, acting within the authority vested in me as an authorized representative of the ~~property located at Point Buckler~~ LLC ~~in Solano County~~, acknowledge that I have received and read a copy of the attached *REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT* and the transmittal letter, dated September 10, 2015, concerning cost reimbursement for Regional Water Board staff costs involved with oversight of cleanup and abatement efforts at Point Buckler Island in Solano County.

I understand the reimbursement process and billing procedures as explained in the letter. I also understand that signing this form does not constitute any admission of liability. ~~Billings for payment of oversight costs should be mailed to the following individual and address:~~

BILLING CONTACT

BILLING ADDRESS

TELEPHONE NO.

RESPONSIBLE PARTY'S SIGNATURE 

(Signature)

(Title)

DATE:

EXHIBIT 2

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE:	July 10, 2015	DEPT. NO.:	24
JUDGE:	HON. SHELLYANNE W. L. CHANG	CLERK:	E. HIGGINBOTHAM
THE WEST SIDE IRRIGATION DISTRICT; CENTRAL DELTA WATER AGENCY; SOUTH DELTA WATER AGENCY; WOODS IRRIGATION COMPANY, <p style="text-align: center;">Petitioners and Plaintiffs,</p> <p style="text-align: center;">v.</p> CALIFORNIA STATE WATER RESOURCES CONTROL BOARD; THOMAS HOWARD, EXECUTIVE DIRECTOR OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD; and DOES 1 THROUGH 100, INCLUSIVE, <p style="text-align: center;">Respondents and Defendants.</p>		Case No.: 34-2015-80002121	
Nature of Proceedings:		ORDER AFTER HEARING ON EX PARTE APPLICATION FOR TEMPORARY STAY RE: ENFORCEMENT OF CURTAILMENT NOTICE OR IN THE ALTERNATIVE TEMPORARY RESTRAINING ORDER AND/OR FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION	

This matter came before the Court pursuant to an ex parte application by the West Side irrigation District, Central Delta Water Agency, and South Delta Water Agency. The ex parte application seeks a stay or a temporary restraining order/order to show cause concerning the May 1, 2015 and June 12, 2015, “NOTICE OF UNAVAILABILITY OF WATER AND NEED FOR IMMEDIATE CURTAILMENT...”¹ (hereinafter referred to as the “May Curtailment Letter” and the “June Curtailment Letter”, jointly referred to as the “Curtailment Letters”) issued by the State Water Resources Control Board through its Executive Director Thomas Howard.

Counsel for Petitioners/Plaintiffs appeared at the ex parte hearing, as well as counsel for Respondents/Defendants. All parties had the opportunity to present oral arguments concerning the issues raised in the moving and opposing papers.

¹ This language is from the heading of the June 1, 2015 letter. The May 1, 2015 letter is titled, “NOTICE OF UNAVAILABILITY OF WATER AND IMMEDIATE CURTAILMENT...”

The Court finds the May Curtailment Letter is properly subject to a judicial determination of whether it violates the Petitioners' due process rights such that a temporary restraining order/order to show cause should issue.² The Court finds there is no administrative process Petitioners must exhaust prior to this determination as to the May Curtailment Letter.³

Although a petition for reconsideration is still pending concerning the May Curtailment Letter, the Court finds that this is a situation where the pursuit of the administrative remedy would result in irreparable harm absent a temporary restraining order. (See *People ex rel. DuFauchard v. U.S. Financial Management, Inc.* (2009) 169 Cal.App.4th 1502, 1512)(citing *Public Employment Relations Bd. v. Superior Court* (1993) 13 Cal.App.4th 1816, 1827.) Petitioners' belief that they must stop diverting water, not because to do so would be a legal violation but merely a violation of the May Curtailment Letter, will result in irreparable harm to their crops while they await a decision on the petition for reconsideration. (Decl. of Jack Alvarez, ¶¶ 7, 8, 11.) Consequently, Petitioners will be irreparably harmed should they have to wait for final resolution of the administrative process before obtaining relief from the immediate mandate the May Curtailment Letter appears to impose outside of the statutory processes provided by the Water Code.

Moreover, for the reasons stated below, the Court finds that the issuance of the May Curtailment Letter violated Petitioners' Due Process rights. Every day the Letter remains in its current form constitutes a violation of those constitutional rights. Accordingly, it is proper for this Court to issue a temporary restraining order while the administrative process is ongoing.

With regard to the June Curtailment Letter, the Court liberally construes the allegations of the Petition For Writ of Administrative Mandate, as it must, and finds that for purposes of this ex parte application, Petitioners CDWA and SDWA have adequately pled that their landowners exercise pre-1914 appropriative and/or permit licenses rights that are subject to the directives given in the Letter. (Petition, ¶¶ 13, 14.) Consequently, Petitioners CDWA and SDWA have standing to bring the instant application concerning the June Curtailment Letter.

The Court finds the 2015 Curtailment Letters are coercive in nature and go beyond the "informational" purpose the Board claims prevents a stay. Consequently, Petitioners are likely to succeed on the merits. As in *Duarte*, even though the Curtailment Letters are not

² Petitioners have filed a petition for reconsideration pursuant to California Water Code section 1126(b) which petition is still pending before the Water Resources Control Board and for which the 90-day period for reconsideration has not yet expired. (See Petition, ¶ 21; Wat. Code §1122.) The Court declines to interfere in these administrative proceedings, and consequently in no way stays the furtherance of that petition in accordance with the Water Code. The Court agrees that in light of the pending reconsideration petition, this matter is not subject to a Civil Code section 1094.5, subdivision (g) stay.

³ Respondents have not argued Petitioners are required to exhaust their administrative remedies. Respondents have instead argued the petition with regard to the May Curtailment Letter is untimely pursuant to the 30-day deadline in section 1126. However, this deadline is extended while a petition for reconsideration is pending, as is the case here.

enforceable on their own and there are no separate penalties for violating them, the language used in the Curtailment Letters results in a “command by the...[g]overnment to stop [water diverting] activities.” (*Duarte Nursery, Inc. v. United States Army Corps of Engineers* (2014) 17 F.Supp.3d 1013, 1018.) It is not a suggestion for “voluntary cessation of activities,” but instead requires Petitioners to “immediately stop diverting water.” (*Id.* at 1019; Pet. exh. B.)

Respondents argue *Duarte* is distinguishable because it involved a single letter sent to a single rights-holder, and provided that the Army Corps of Engineers had already determined that a violation of the Clean Water Act had occurred. (*Duarte*, 17 F.Supp.3d at 1015.) Respondents contend here, the Curtailment letters are form letters being sent to hundreds of appropriators, and are merely informational with no pre-determination that any individual rights-holder has violated the law.

While all parties acknowledge the Curtailment Letters were sent to more than one appropriator, the letters provided to the Court are addressed to an individual company, and identify a specific claim of rights at issue. The Curtailment Letters further declare and determine that the recipient is not entitled to divert water because that water is necessary to meet senior water rights holders, thus making a determination of the recipient’s water rights priority. (Pet., exh. B, ¶2.) Through the inclusion of this specific information, the Curtailment Letters appear not to be generalized notices, but instead a specific adjudication and command with respect to the particular rights holder.

Further, nothing in *Duarte* limits its holding to an instance involving only one notice. The *Duarte* court’s focus was on the fact that nothing in the letter notified “plaintiffs that the Corps could not take action based upon the CDO alone.” (*Duarte*, 17 F.Supp.3d at 1022.) The same is true here, as the Curtailment Letters indicate the recipient must “immediately stop diverting water” and do not clearly state that the letter is merely informational, without any legal force or effect.

The Curtailment Letters also require recipients to “document receipt of this notice by completing an online Curtailment Certification Form (Form) within seven days. The Form confirms your cessation of diversion under the specific pre-1914 claim of right. Completion of the Form is mandatory...” Nowhere in this language do the Curtailment Letters assert that Petitioners are free to ignore the directive that they cease diverting water or that it is merely a suggestion.⁴ At the hearing on this matter, Respondents acknowledged that the Form requires diverters to sign under penalty of perjury that they are no longer diverting water.

Although the Curtailment Letters do not state that the Board has made a specific determination that the particular recipient has already engaged in illegal conduct, the letters plainly state that the recipient must “immediately stop diverting water” and that

⁴ This is similar to *Phelps v. State Water Resources Control Board* (2007) 157 Cal.App.4th 89, where the Court held plaintiffs were aggrieved by a curtailment notice within the meaning of section 1126(b) because it “required plaintiffs to immediately discontinue diversion of water under their licenses.” Although *Phelps* involved only one notice, the implication of the language of the letters is the same as in this case.

the only action available is to sign the compliance certification that “confirms your cessation of diversion under the specific pre-1914 claim of right.” (Pet., exh. B.)⁵ As in *Duarte*, this strong directive implicates a pre-determination as to the availability of water pursuant to the recipient’s appropriation rights. The Board, “did not ‘notify’ plaintiffs they were operating in violation of the law, it commanded plaintiffs to stop their activities.” (*Duarte*, 17 F.Supp.3d at 1023.)

At oral argument, Respondents argued that because the Curtailment Letters did not expand or alter Petitioners’ civil liability for water diversions and are merely “informational documents”, a temporary restraining order should not issue. Respondents’ argument is not only misguided, it is also inaccurate.

The focus is not whether the Petitioners’ legal exposure remains unchanged or not, but rather whether the Curtailment Letters could be reasonably interpreted to be an order or command by the government, not merely a suggestion or request for voluntary cessation of activities. (*Duarte*, 17 F.Supp.3d at 1020.) Moreover, contrary to Respondents’ assertions, the Curtailment Letters have altered Petitioners’ legal position. The Curtailment Letters state that even if there is available water for the water user, said water is dedicated for senior water rights’ holders needs, conclude that the recipient no longer has any legal right to said water, and orders the recipient to “immediately stop diverting water...” Indeed, the Curtailment Letters appear to alter Petitioners’ civil liability as the Board has apparently concluded without hearing or notice that Petitioners are no longer entitled to divert water for their needs.

As the Court in *Duarte* stated, “If the [Letters] were simply a ‘notification’ to plaintiffs, then it should have said so, rather than clothing itself as an ‘order’ which carried with it the authority to ‘prohibit’ the plaintiffs from continuing their activities.” (*Duarte*, 17 F.Supp.3d at 1020.) The Court recognizes, and Respondents admit, that the Curtailment Letters do not subject Petitioners to any additional liability or penalties above that which they may already be subjected to due to the extreme drought conditions California is currently experiencing. However, the Curtailment Letters represent that the Board has already adjudicated that the recipients are no longer entitled to divert water and that any future diversions would be improper and a trespass [“This Form confirms your cessation of diversion under the specific post-1914 water right... Completion of the form is mandatory to avoid unnecessary enforcement proceedings”].

Respondents are free to provide truly informational notices to water diverters of the nature of the drought and the Board’s right to initiate Water Code section 1831 or 1052 proceedings. Respondents are also free to initiate inquiries with diverters as to whether they have alternate water sources and to otherwise exercise their statutory enforcement authority under the Water Code, including investigation and instituting any actions for trespass. To be clear, Respondents are free to exercise their statutory authority to enforce the Water Code as to any water user, including these Petitioners, if it deems them to be in

⁵ In *Duarte* the Court noted that the assertion that a violation has already occurred, by itself, is insufficient to satisfy the ripeness requirement. A letter or notice must also threaten consequences for failure to take certain action, as it does here. (*Duarte*, 17 F.Supp.3d at 1025.)

violation of any provisions of the Water Code, so long as the bases for said action are not the Curtailment Letters.

However, the language of the Curtailment Letters goes beyond informational and is instead coercive such that a recipient is likely to believe they are no longer allowed to divert. This belief is not because such a diversion would be a trespass or other legal violation, but because the Board has already declared in the Curtailment Letters that it has made a determination that they are no longer entitled to divert under their appropriative water rights, without any sort of pre-deprivation hearing. Respondents do not challenge Petitioners' assertion that any cessation of water diversion done in response to the Curtailment Letters, not as a result of an unavailability of legally divertible water, would cause a serious hardship to Petitioners. This is an issue ripe for judicial intervention and the Court concludes that the Curtailment Letters as presently drafted constitute a violation of the due process rights of the Petitioners.⁶

The Curtailment Letters, including the requirement that recipients sign a compliance certification confirming cessation of diversion, result in a taking of Petitioners' property rights without a pre-deprivation hearing, in violation of Petitioners' Due Process Rights. The Court hereby **GRANTS** the ex parte application for a temporary restraining order/order to show cause as to why a preliminary injunction should not issue requiring the Board to issue a revised letter/notice that is informational in nature.

A temporary restraining order shall issue staying or prohibiting Defendants State Water Resources Control Board and Thomas Howard from taking any action against the West Side Irrigation District and landowners of the other petitioner Districts on the basis of the 2015 Curtailment Letters sent by the Water Board's Executive Director, Thomas Howard, or on the basis of a failure to complete a Curtailment Certification Form.

The matter is set for an order to show cause on July 30, 2015 at 9:00 a.m. in Department 24. Respondents shall file with the clerk of Department 24 and serve (via email or fax) any supplemental Opposition to the Order To Show Cause no later than July 16, 2015. Petitioners shall file with the clerk of Department 24 and serve (via email or fax) any Reply no later than July 23, 2015. The application for a temporary stay pursuant to CCP §1094.5(g) is **DENIED**.

Counsel for Petitioners to submit a formal order for the Court's signature pursuant to CRC 3.1312.

⁶ There is no allegation that Petitioners have filed a petition for reconsideration with the Board concerning the June Curtailment Notice. Respondents made no argument that Petitioners were required to do so before bringing the instant petition and ex parte application. Consequently, the Court does not address whether such a reconsideration petition was required.



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

REPLY TO

JUL 08 2013

DEPARTMENT OF THE ARMY PERMIT
REGIONAL GENERAL PERMIT 3

PERMITTEES: Suisun Resource Conservation District; California Department of Fish and Wildlife; California Department of Water Resources; United States Bureau of Reclamation

PERMIT NO.: 2012-00258N

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittees 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 LOCATION: The management area covered by Regional General Permit 3 (RGP3) is located in the Suisun Marsh (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 DESCRIPTION: California Department of Fish and Wildlife (CDFW); California Department of Water Resources (DWR); United States Bureau of Reclamation (Reclamation); and the landowners represented by the Suisun Resource Conservation District (SRCD) are authorized to place and maintain structures and/or perform work, and discharge dredged or fill material in areas subject to Corps jurisdiction while completing the activities described below within the Marsh.

The CDFW, DWR, and Reclamation are responsible for ensuring that all authorized work done by their personnel or on their land is addressed and completed 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 guidance to the landowners. However, the Corps is the authority on determining if an activity is authorized by this permit.

The following structures, work activities, and discharges of dredged or fill material 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 1-7):

1) ACTIVITIES IN DITCHES

a. Work in Interior Ditches

Work in interior ditches shall consist of excavation of material from existing primary and secondary ditches and excavation for the creation of new primary or secondary ditches. The purpose of this work shall be to maintain the

capacity of the ditches to convey water or to obtain material to be used in levee maintenance. Also authorized is 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 Sheets 5 & 6). Excavation of new primary or secondary ditches is also authorized to improve water circulation on properties within the management areas covered under this permit. CDFW and the private landowners shall be authorized to excavate material from primary and secondary ditches up to the annual cubic yard amount limits based on property size of ownership as outlined below:

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 shall have a different cap to what is described above. Excavation within DWR facilities shall be limited to an average of 1.5 cubic yards per linear foot of DWR levee, which shall amount to 3 cubic yards per linear foot of ditch for RRDS, MIDS, and GYS, which have levees on both sides.

Excavated material that is not used in another authorized activity (i.e., raising the elevation of the managed wetlands, or levee repair) shall be hauled to a disposal site outside of Corps jurisdiction.

Sidecast materials may be left in place to dry for up 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

Material excavated from spreader ditches may be sidecast adjacent to ditch. Material that has been sidecast 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

c. Replacement of Rip-Rap on Interior Ditch Banks

This permit authorizes landowners to place additional rip-rap on the slopes of the interior ditches where rip rap had been previously applied but since washed away. The placement of rip-rap must be in accordance with Special Condition #19 of this permit.

d. Placement of new Rip-Rap on Interior Ditch Banks

This permit authorizes permittees to place new rip-rap (i.e., placement in a new location) on interior ditch banks. Total placement of new rip-rap on interior ditch banks shall not exceed 200 linear feet per year. The placement of rip-rap must be in accordance with Special Condition #19 of this permit.

2) ACTIVITIES ON LEVEES:

a. Repair of Interior and Exterior Levees

Landowners are 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. With respect to exterior levee maintenance, permittees are authorized to place up to 1.5 cubic yards of levee material per linear foot (capped). Regarding interior levee maintenance, the amount of material each landowner is authorized to place is dependent on the size of the individual ownership in accordance with the table below.

Individual Maximum Ownership Amount (cubic yards [cys]) of Material Placed on Interior Levees annually, (Note: this does not apply to DWR levees. DWR levee repairs shall be capped at 1.5cy/linear foot):

<u>acres</u>	<u>cys</u>
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

Note: The above sliding scale only applies to interior levees. As previously mentioned, exterior levee repairs shall be capped at 1.5 cubic yards/linear foot of exterior levee, this cap applies to all properties.

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

This permit authorizes replacement of rip-rap in areas where it was previously placed, including the tidal sides of exterior levees. The placement of rip-rap must be in accordance with Special Condition #19 of this permit.

This permit authorizes up to 334 linear feet of new riprap on exterior levees over the 5-year permit period, (approximately 66 linear feet per year), on exterior levee slopes not previously rip-rapped. Placement of rip-rap on the tidal side slopes of exterior levees shall be authorized after it has been determined by the Corps that conditions of the site would not support other types of erosion control. The placement of rip-rap must be in accordance with Special Condition #18 of this permit.

In cases where the Corps has determined erosion control measures are needed but alternative bioengineered erosion control options are available, this permit shall authorize the installation of alternative bank protection such as brush boxes, biotechnical wave dissipaters, and vegetation upon review and approval by the Corps.

Brush boxes shall use natural materials associated with native plantings. Brush box installations shall be done during summer months and at low tide.

c. Coring of Levees

Material excavated from the trench of a cored levee shall be temporarily sidecast onto the crown of the levee. The material shall be used to backfill 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. Work on the exterior side (i.e., the tidal side) of bulkheads shall be done at low tide and generally not involve any excavation of sediments from the exterior slough. In-water work shall be done by hand.

e. Maintenance of Existing Roads

This permit shall authorize each ownership to place up to 5,000 cubic yards of earth or gravel material per year to maintain existing roads. This permit does not authorize construction of new roadways or widening of existing roadways.

3) ACTIVITIES IN MANAGED WETLANDS

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

Ownerships may grade managed wetlands to: obtain material for levee maintenance; to expand desired wetland habitats; improve water management capability and drainage; raise subsided areas; and creation of waterfowl loafing and nesting habitats. RGP3 does not authorize importing material to an ownership project site for the aforementioned grading purposes. 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

b. Discing

This permit authorizes discing (i.e., dragging a disc behind a tractor) for enhancement activities such as: vegetation management; turning over the seed bed for planting; promoting new vegetation; creation of open water habitat; and to reduce mosquito habitat.

c. Installation of Permanent Pumps and Pump Platforms

Installation of permanent pumps and pump platforms installed by landowners to pump water that cannot be drained effectively via gravity through the exterior water control structures shall be the minimum size necessary to hold the pump.

d. Installation, Relocation, or Removal of Duck Hunting Blinds

This permit authorizes each ownership to install, relocate or remove 5 duck hunting blinds annually.

e. Constructing Cofferdams in Managed Wetlands

This permit authorizes construction of cofferdams when 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 shall 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 shall be removed from the ditch and the ditch shall be restored to its original width and depth. This work shall be implemented in the summer months. Sheet pile coffer dams are acceptable for use if the sheets are pushed into place, not pile driven.

4) ACTIVITIES ASSOCIATED WITH WATER CONTROL STRUCTURES

a. Replacement and Maintenance of Water Control Structures

This permit authorizes replacement of water control structures deteriorated by oxidation and rust in the brackish conditions of the Marsh. Replacement of a water control structure shall consist 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 new water control structure shall consist of trenching across a levee and placement of the new water control structure where there was not one previously. Maintenance of a water control structure shall 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 shall be used to backfill the trench or used for levee maintenance. The use of 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 and should be used when appropriate.

This permit authorizes replacement of a water control structure with a larger structure to increase water management capabilities if the sole purpose is for drainage.

b. Installation of New Interior or Exterior Water Control Structures

This permit authorizes the annual installation of 50 exterior water control structures within the action area (depicted in Sheet 4). New or enlarged exterior water intake structures shall be screened in accordance with the CDFW'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 NMFS or the Service 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 CDFW for all water control structure replacements except when a bulkhead 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 lilaeopisis (*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 shall be avoided and a map showing the location of the plant shall be provided to the Corps and Service 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 Service as a Federal Threatened or Endangered Species, it shall be carefully transplanted to the nearest suitable habitat by a qualified representative of SRCD or CDFW. If a Federally listed Threatened or Endangered Plant is found which cannot be avoided during the proposed work, the qualified representative of SRCD or CDFW shall notify the USACE immediately so it can consult with the Service.

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

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. This permit authorizes up to 1,000 square feet of wetlands throughout the marsh to be filled annually for the purpose of installing fish screens.

d. Removal of Floating Debris

This permit authorizes the removal of floating vegetation, and debris such as wood and trash, that accumulates in front of pipes, trash racks, and other structures. This debris shall normally be removed using a long-reach excavator. Work shall be done annually or on an as-needed basis, normally during the fall season. The Corps shall review and approve proposals to remove debris if the work proposed is outside the aforementioned normal parameters.

e. Suisun Marsh Salinity Control Gate Repair and Maintenance

This permit authorizes repairs and maintenance, conducted by DWR, to restore normal capacity to the salinity control gate facility and includes servicing, replacing, and installing sections and pieces of the radial gates or boat locks that are connected to or associated with the entire facility. Work shall normally be conducted above water from a boat or the superstructure while sections are hoisted out of the water. If the aforementioned repairs cannot be conducted under the normal procedures described above, the Corps shall be contacted for review and approval prior to initiation of work.

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

This permit authorizes the DWR and/or Reclamation to clean fish screens.

5) SALINITY MONITORING

a. Salinity Monitoring Station Maintenance, Repair, and Replacement

This permit authorizes the DWR and Reclamation to conduct equipment maintenance, replacement, calibration, and cleaning of salinity monitoring station parts. These activities shall normally be done above the water or adjacent to the water on the levee bank. Stilling well replacement and walkway/platform piling replacement shall involve removal by tractors and trucks operated from the existing roadway/levee and excavators or cranes operated from the roadway/levee or barge and shall normally only occur once every 5 to 10 years. Work shall normally be scheduled during the dry

months of summer and fall. If the aforementioned work cannot be conducted under the normal procedures described above, the Corps shall be contacted for review and approval prior to initiation of work.

b. Salinity Monitoring Station Relocation, Installation, and Removal

This permit authorizes DWR and Reclamation to relocate, install, or remove salinity monitoring stations on an as-needed basis. Maintenance equipment shall normally include trucks, bucket excavators, small cranes, boats, barges, and other equipment as required. Work shall normally occur during the dry months of summer and fall. Removal of a monitoring station shall not disturb an area of greater than 400 square feet. New monitoring stations shall not disturb an area of greater than 50 square feet. If the aforementioned work cannot be conducted under the normal procedures identified above, the Corps shall be contacted for review and approval prior to initiation of work.

6) PERMIT ADMINISTRATION:

There shall be two procedures for authorization: routine and alternative.

a. Routine Procedures

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

- (1) Landowners, including CDFW and DWR, shall plan a project and fill out a work request form, then submit the form and accompanying maps to the SRCD.
- (2) The SRCD will then prioritize and compile the requests and submit monthly Proposed Work Reports describing the proposed work to the Corps of Engineers.
- (3) The Corps will have 30 days to verify if proposed work is authorized by this Regional Permit. If proposed work cannot 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

- (1) Landowners shall 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.

PERMIT SPECIAL CONDITIONS:

1. The time limit for completing the work authorized is December 31, 2017.
2. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed Species shall be fully implemented as stipulated in the enclosed NMFS BO dated **July 3, 2013**, and the enclosed Service BO dated **June 10, 2013**. Project authorization under this permit is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the authorization for your project. The Service and NMFS are, however, the authoritative federal agency for determining compliance with the incidental take statement and for initiating appropriate enforcement

actions or penalties under the Endangered Species Act.

3. 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. The Corps shall make a determination if restoration of the site is required.
4. 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.
5. The CDFW and/or SRCD shall keep the Corps informed of any changes in property ownership in the Marsh and provide the Corps with an updated property club ownership map with the following month's proposed work report submittal when changes occur.
6. All parties must comply with the attached conditions of the State of California San Francisco Bay Regional Water Quality Control Board Certification, dated **June 27, 2013**, Titled, "Subject: Conditional Water Quality Certification for the Regional General Permit Number 3 Reissuance Project, Suisun Marsh, Solano County", (CIWQS Place ID: 792443).
7. Landowners working under this authorization shall 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.
8. Work is not authorized within 100-feet of a known archeological site (CAL-SOL-13).
9. Exterior levee repairs shall be capped at 1.5 cubic yards/linear foot of exterior levee. This amount applies to all properties.
10. Authorized work may not be conducted in the areas shown on the attached California clapper rail (*Rallus longirostris obsoletus*) Breeding Habitat maps (Figure 2) between February 1 and August 31 (refer to the aforementioned habitat maps and reference the latest club map for properties that are affected by this restriction). This Corps permit does not authorize you to take an endangered species (Please see Special Condition #2). The Service is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA as it pertains to California clapper rail and its habitat.
11. The SRCD and the CDFW shall continue to identify and prioritize placement of water control structures which require fish screens in consultation with the Corps, NMFS and the Service. The SRCD and CDFW shall seek to install screens at the highest priority sites.
12. Any suspected take of endangered species shall be immediately reported to the CDFW or the SRCD who shall immediately contact the Service or the NMFS. Any carcasses of protected fish shall be frozen in a whirl-pak bag and retained until instructions are received from the applicable Federal agency.
13. Landowners diverting water from the sloughs shall obey unscreened water diversion restrictions outlined in the attached NMFS BO dated July 3, 2013, from November 1 to the last day of duck hunting season. Also pursuant to conditions outlined in the aforementioned NMFS BO, these landowners are prohibited from diverting unscreened water from sloughs from February 21 to March 31 (reference the salmon diversion restrictions described in the NMFS BO at Page 38).
14. Landowners diverting water from sloughs, shall obey unscreened water diversion restrictions described in the

attached Service BO dated Jun 10, 2013, pursuant to intake capacity restrictions between April 1 and May 31, (reference the table for determining delta smelt diversion restrictions in the BO). If between April 1 and May 31 two out of the three CDFW 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 follow procedures outlined in the aforementioned Service BO (e.g., 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 pursuant to the above mentioned Service BO.

15. While diversion restrictions are in place the SRCD and CDFW shall monitor gate closures, notify landowners, and take appropriate action on such gates in compliance with the attached BOs from Service and NMFS dated **June 10, 2013** and **July 3, 2013** respectively.
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. When metal pipes are replaced they shall be replaced with HDPE where it is appropriate to do so. Pipe shall be pre-assembled to minimize work time in waters of the United States.
17. Landowners importing any material except for rock material from outside the Marsh must contact the RWQCB before importation. Landowners must obtain the RWQCB's concurrence that the imported material is acceptable before its use.
18. This permit authorizes up to 334 linear feet of new riprap on exterior levees over the 5-year permit period. This permit also authorizes the re-placement of rip-rap on the tidal side of exterior levees where it was previously placed. For sites where new rip-rap is proposed or proposals for rip-rap where it was previously placed: rip-rap is authorized in the minimum amount necessary; new rip-rap is authorized by this permit where fetch length exceeds 1,000 feet in the direction of the predominant southwest to southeast winds during high water conditions to dissipate wind driven wave energy in the minimum amount necessary; rip-rap shall not be placed on emergent vegetation; emergent vegetation shall not be uprooted or displaced by rip-rap; placement of rip-rap shall occur at low tide; placement of rip-rap shall generally occur during summer months; where new rip-rap is applied, integrative vegetation also shall be applied where it is biologically appropriate; stone utilized for rip-rap shall consist of field stone or rough un-hewn quarry stone; the stone shall be hard and angular and of a quality that will not disintegrate on exposure to water or weathering. Recycled concrete equivalent may be used provided it has a density of at least 150 pounds per cubic foot and does not have any exposed steel or reinforcing bars; any proposed alternative types of rip-rap material must be reviewed and approved by the Corps prior to placement.
19. Placement of rip-rap shall occur generally during summer months; rip-rap shall be placed in an area with persistent erosion; where new rip-rap is applied, integrative vegetation also shall be applied where it is biologically appropriate; rip-rap shall not be placed on emergent vegetation; emergent wetland vegetation shall not be uprooted during the placement of rip-rap, nor shall it be displaced by rip-rap; stone utilized for rip-rap shall consist of field stone or rough un-hewn quarry stone; the stone shall be hard and angular and of a quality that will not disintegrate on exposure to water or weathering. Recycled concrete equivalent may be used provided it has a density of at least 150 pounds per cubic foot and does not have any exposed steel or reinforcing bars; any proposed alternative types of rip-rap material must be reviewed and approved by the Corps prior to placement.
20. 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.
21. The proposed work reports shall be submitted to the Corps, NMFS, State Lands Commission, and RWQCB by the 1st day in each month. When the 1st day falls on a weekend the report would be due the following Monday.

22. The SRCD shall prepare an annual report that summarizes the amounts and locations of activities performed under this 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 (e.g., replacing a metal pipe with HDPE pipe to lessen future maintenance needs).
23. 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.

GENERAL CONDITIONS:

1. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
2. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
3. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
4. You 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 your permit.
5. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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.

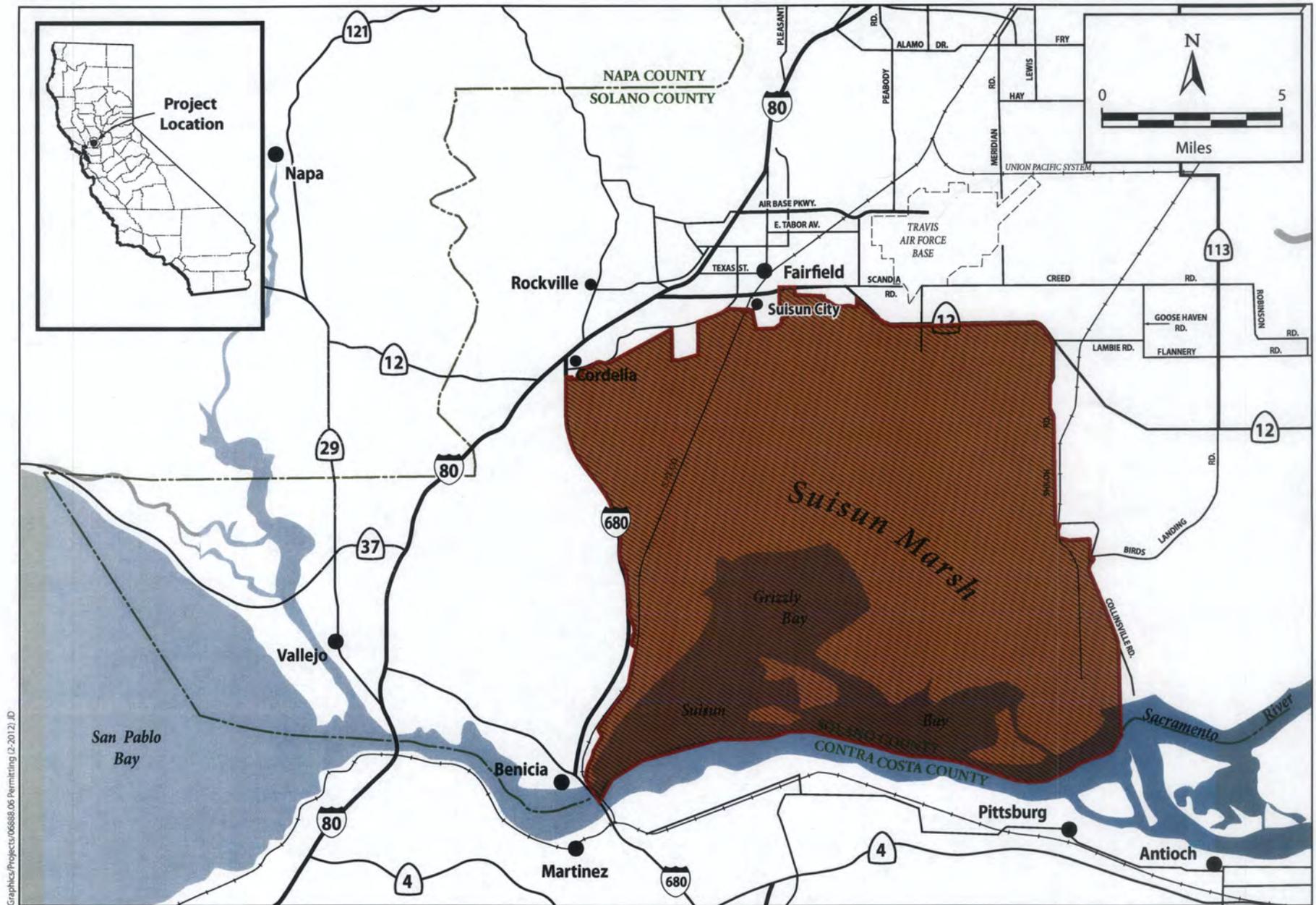
This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



John K. Baker
Lieutenant Colonel, U.S. Army
Commander and District Engineer

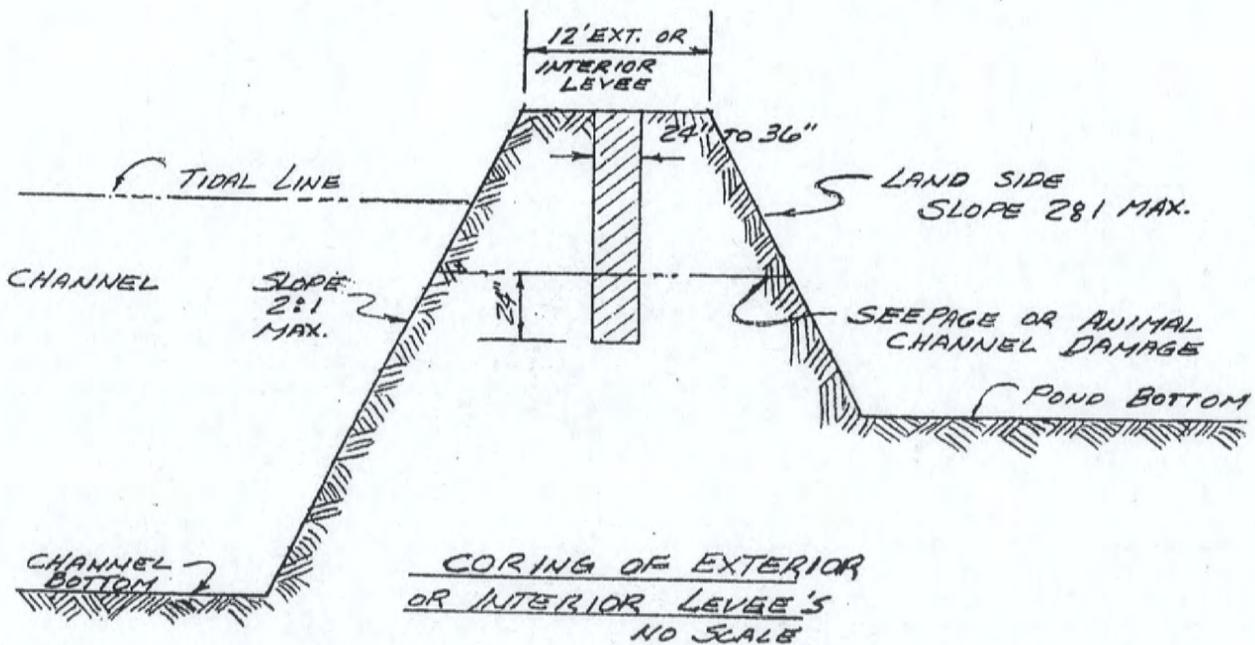
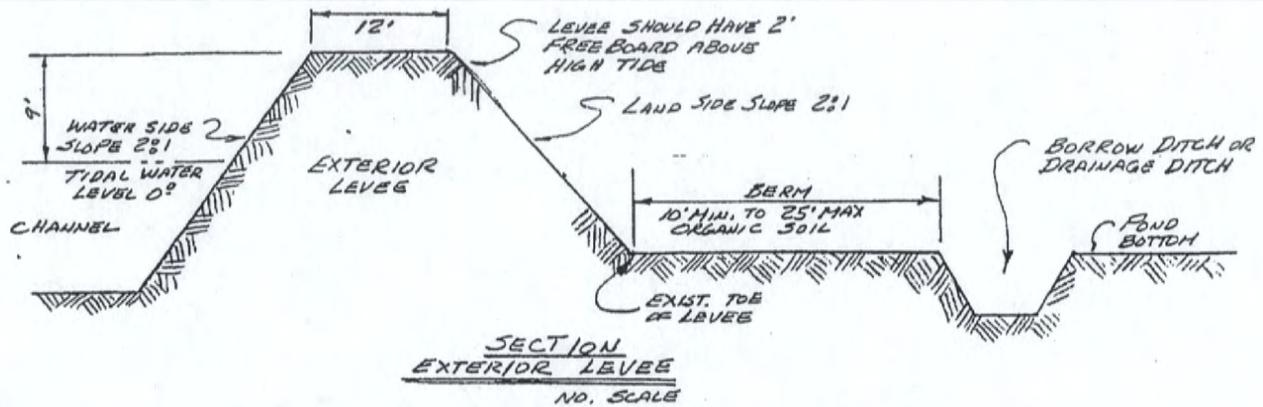
7/8/13

(DATE)

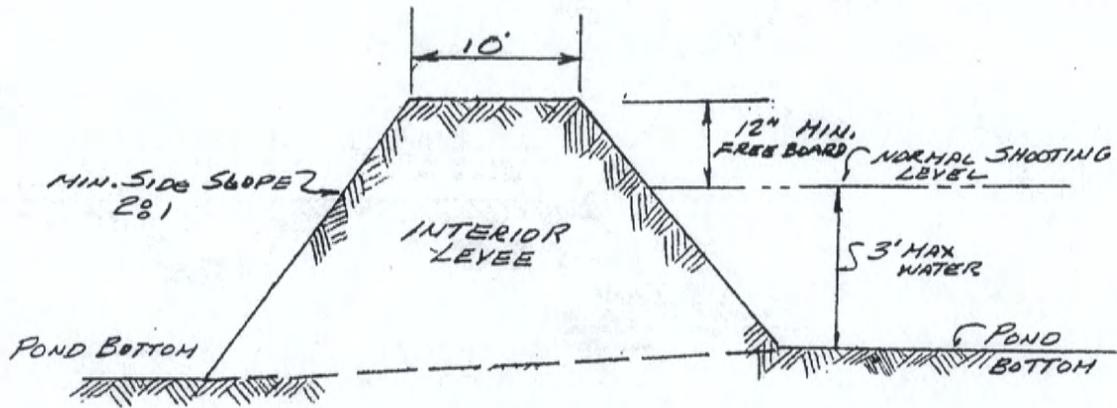


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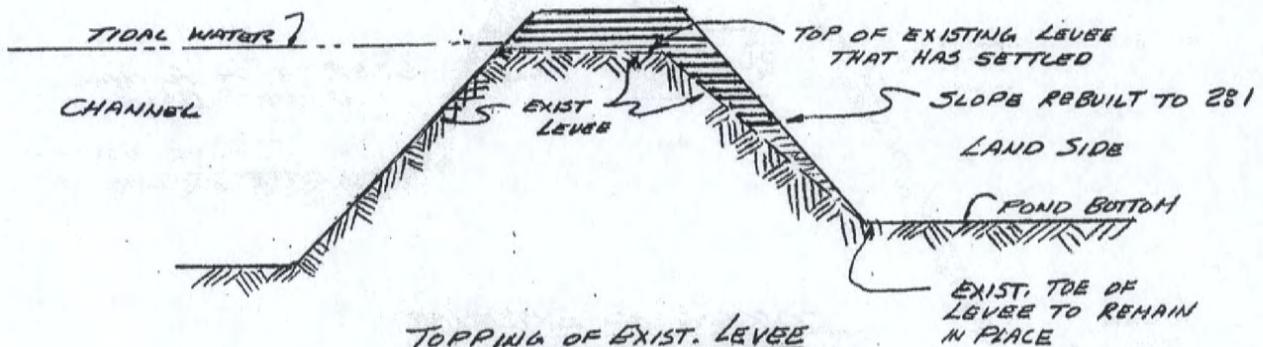
Figure 1
Project Location



<p>Purpose: Conduct annual wetland maintenance activities to protect and enhance Suisun Marsh managed wetlands. Datum: MLLW Property Owners: 1. Suisun Resource Conservation District (SRCD) and private landowners 2. California Department of Fish and Wildlife (DFW) 3. California Department of Water Resources (DWR)</p>	<p>TYPICAL CROSS SECTIONS No Scale Location: Suisun Marsh - Near Fairfield CA. At: Individually Owned State and Private Properties County: Solano State: CA</p>	<p>Application By: 1) SRCD: 2544 Grizzly Island Rd. Suisun CA. 94585 2) DFW: 2109 Arch-Airport Rd. Suite 100, Stockton CA. 95206 3) DWR: 3500 Industrial Blvd. West Sacramento, CA. 95691 4) U.S. Bureau of Reclamation 801 I St. Suite 140, Sacramento CA. 95814 Sheet 2 of 7 Date: 6/26/13</p>
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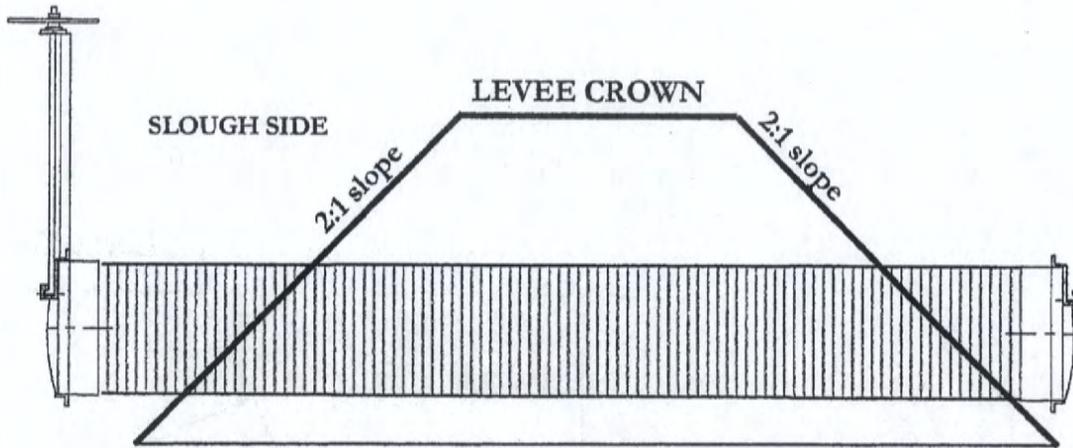


SECTION
INTERIOR LEVEE
NO SCALE

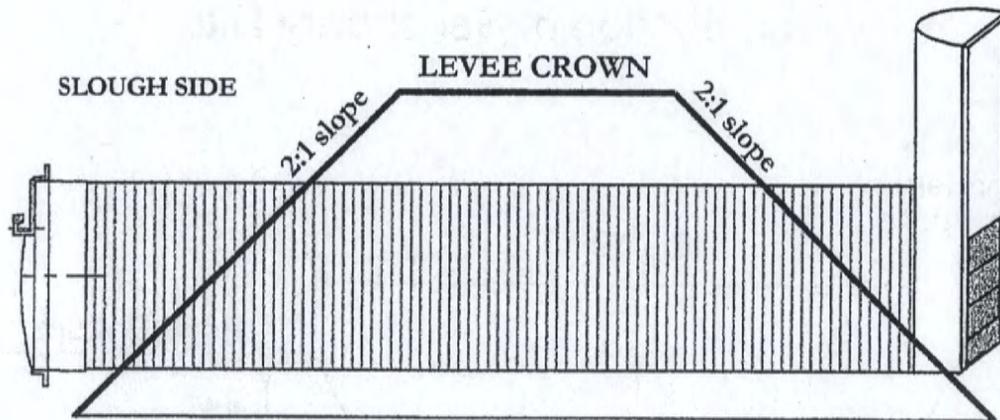


TOPPING OF EXIST. LEVEE
AND REPAIRING SIDE SLOPES
NO SCALE
WITH SETTLEMENT & EROSION

<p>Purpose: Conduct annual wetland maintenance activities to protect and enhance Suisun Marsh managed wetlands. Datum: MLLW Property Owners: 1. Suisun Resource Conservation District (SRCD) and private landowners 2. California Department of Fish and Wildlife (DFW) 3. California Department of Water Resources (DWR)</p>	<p>TYPICAL CROSS SECTIONS No Scale Location: Suisun Marsh - Near Fairfield CA. At: Individually Owned State and Private Properties County: Solano State: CA</p>	<p>Application By: 1) SRCD: 2544 Grizzly Island Rd. Suisun CA. 94585 2) DFW: 2109 Arch-Airport Rd. Suite 100, Stockton CA. 95206 3) DWR: 3500 Industrial Blvd. West Sacramento, CA. 95691 4) U.S. Bureau of Reclamation 801 I St. Suite 140, Sacramento CA. 95814 Sheet 3 of 7 Date: 6/26/13</p>
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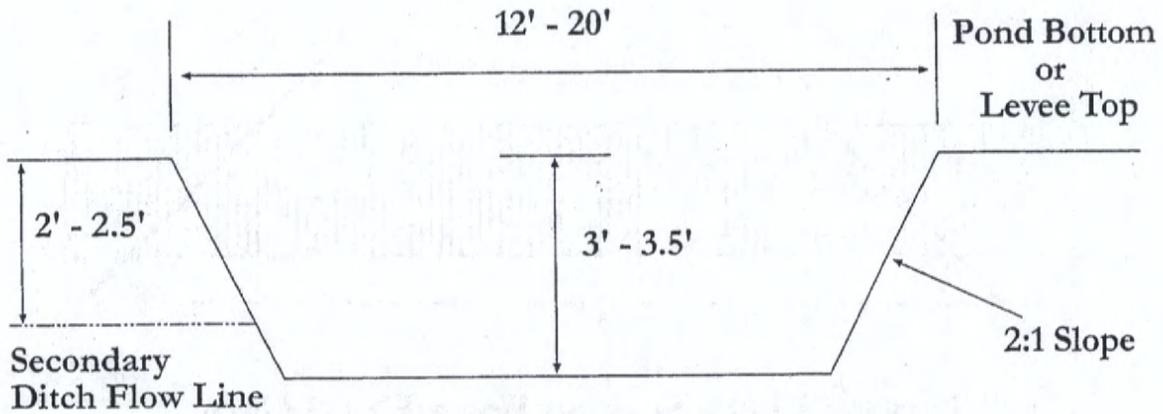
Typical Levee Section For a Flood Gate



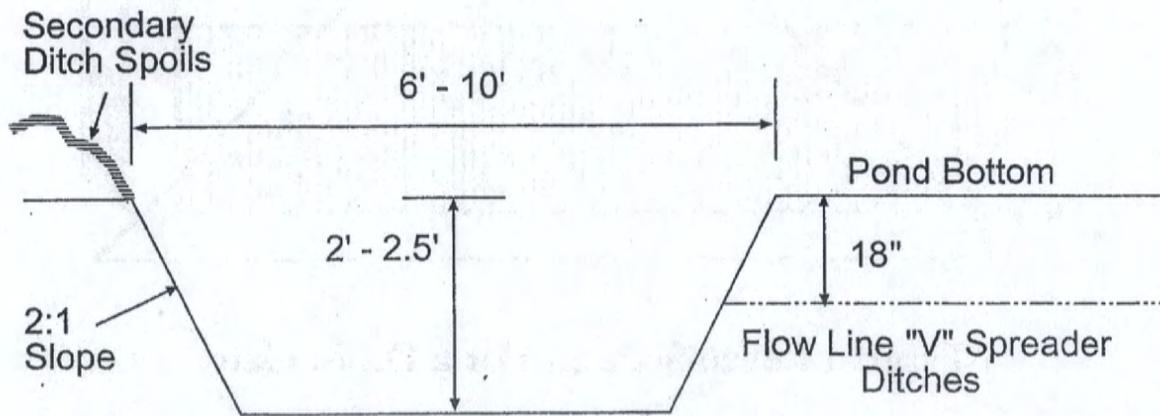
Typical Levee Section For a Drain Gate

<p>Purpose: Conduct annual wetland maintenance activities to protect and enhance Suisun Marsh managed wetlands. Datum: MLLW Property Owners: 1. Suisun Resource Conservation District (SRCD) and private landowners 2. California Department of Fish and Wildlife (DFW) 3. California Department of Water Resources (DWR)</p>	<p>TYPICAL CROSS SECTIONS No Scale Location: Suisun Marsh - Near Fairfield CA. At: Individually Owned State and Private Properties County: Solano State: CA</p>	<p>Application By: 1) SRCD: 2544 Grizzly Island Rd. Suisun CA. 94585 2) DFW: 2109 Arch-Airport Rd. Suite 100, Stockton CA. 95206 3) DWR: 3500 Industrial Blvd. West Sacramento, CA. 95691 4) U.S. Bureau of Reclamation 801 I St. Suite 140, Sacramento CA. 95814 Sheet 4 of 7 Date: 6/26/13</p>
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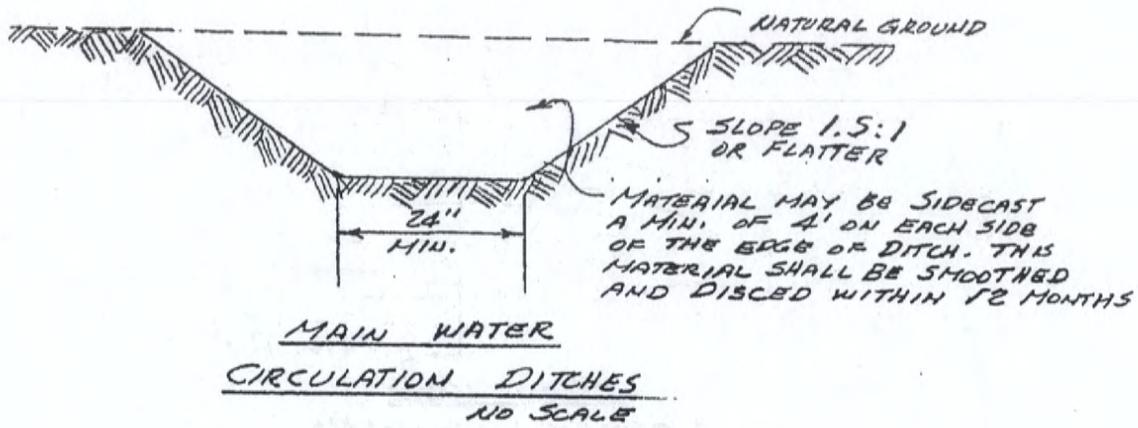
Cross Section of Primary Ditch



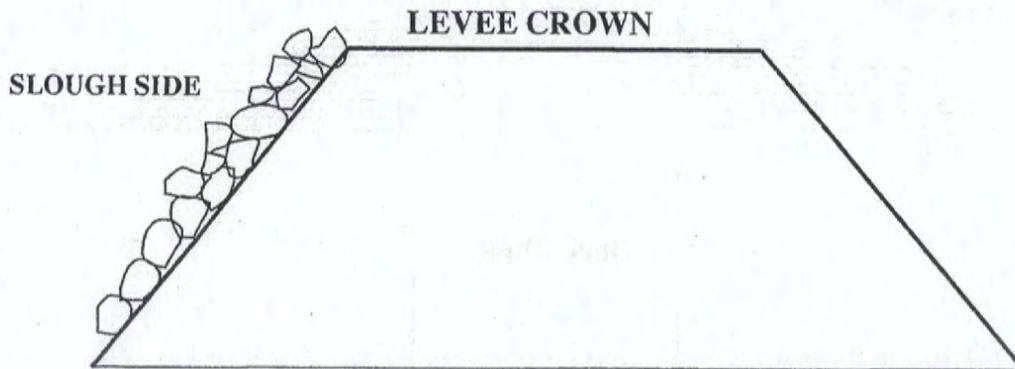
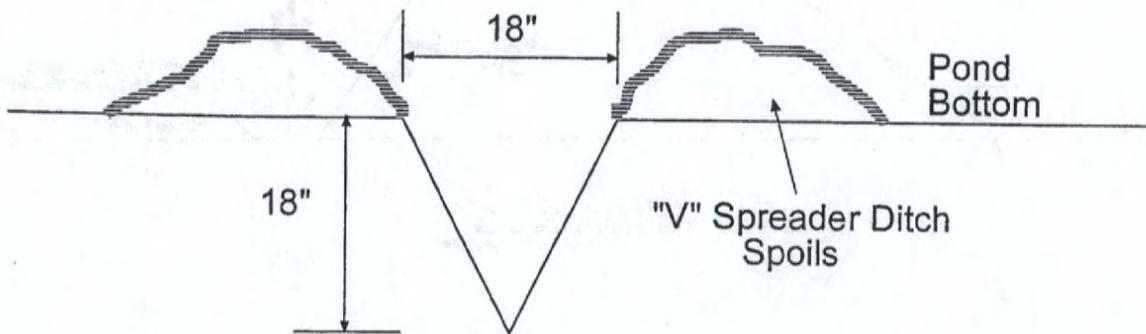
Cross Section of Secondary Ditch



<p>Purpose: Conduct annual wetland maintenance activities to protect and enhance Suisun Marsh managed wetlands. Datum: MLLW Property Owners: 1. Suisun Resource Conservation District (SRCD) and private landowners 2. California Department of Fish and Wildlife (DFW) 3. California Department of Water Resources (DWR)</p>	<p>TYPICAL CROSS SECTIONS No Scale Location: Suisun Marsh - Near Fairfield CA. At: Individually Owned State and Private Properties County: Solano State: CA</p>	<p>Application By: 1) SRCD: 2544 Grizzly Island Rd. Suisun CA. 94585 2) DFW: 2109 Arch-Airport Rd. Suite 100, Stockton CA. 95206 3) DWR: 3500 Industrial Blvd. West Sacramento, CA. 95691 4) U.S. Bureau of Reclamation 801 I St. Suite 140, Sacramento CA. 95814 Sheet 5 of 7 Date: 6/26/13</p>
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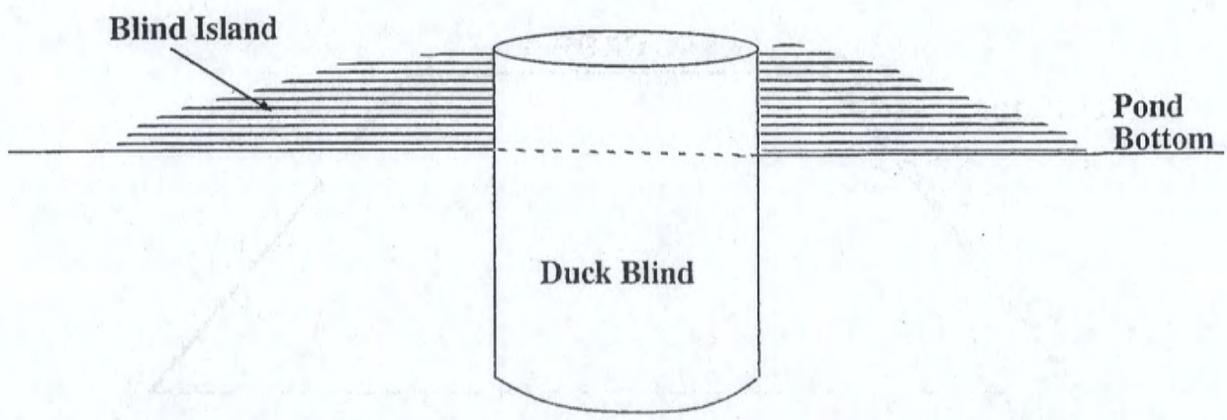
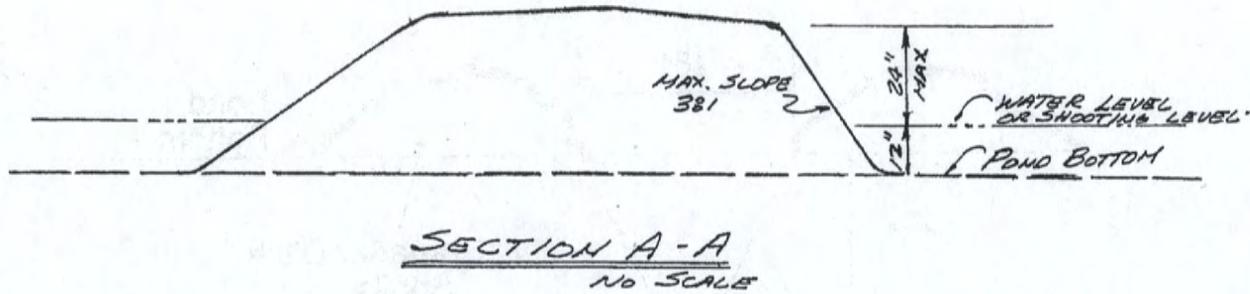
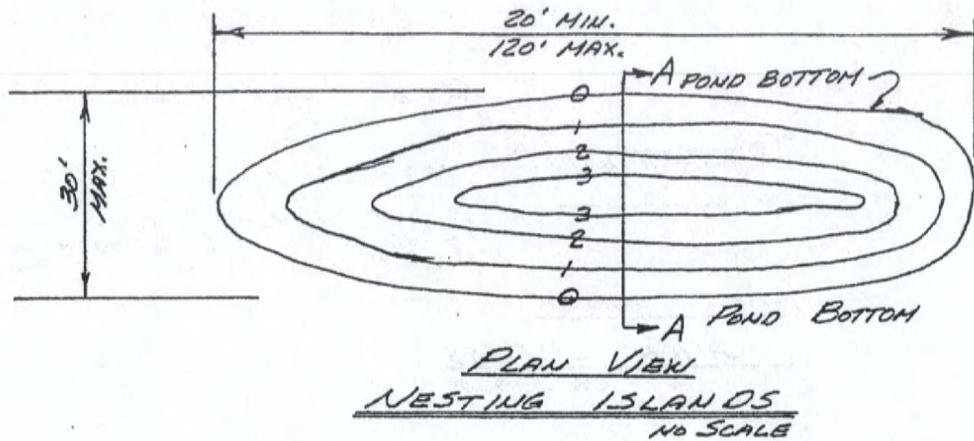


Cross Section "V" Spreader Ditch



Typical Levee Section For the Replacement of Rip-Rap

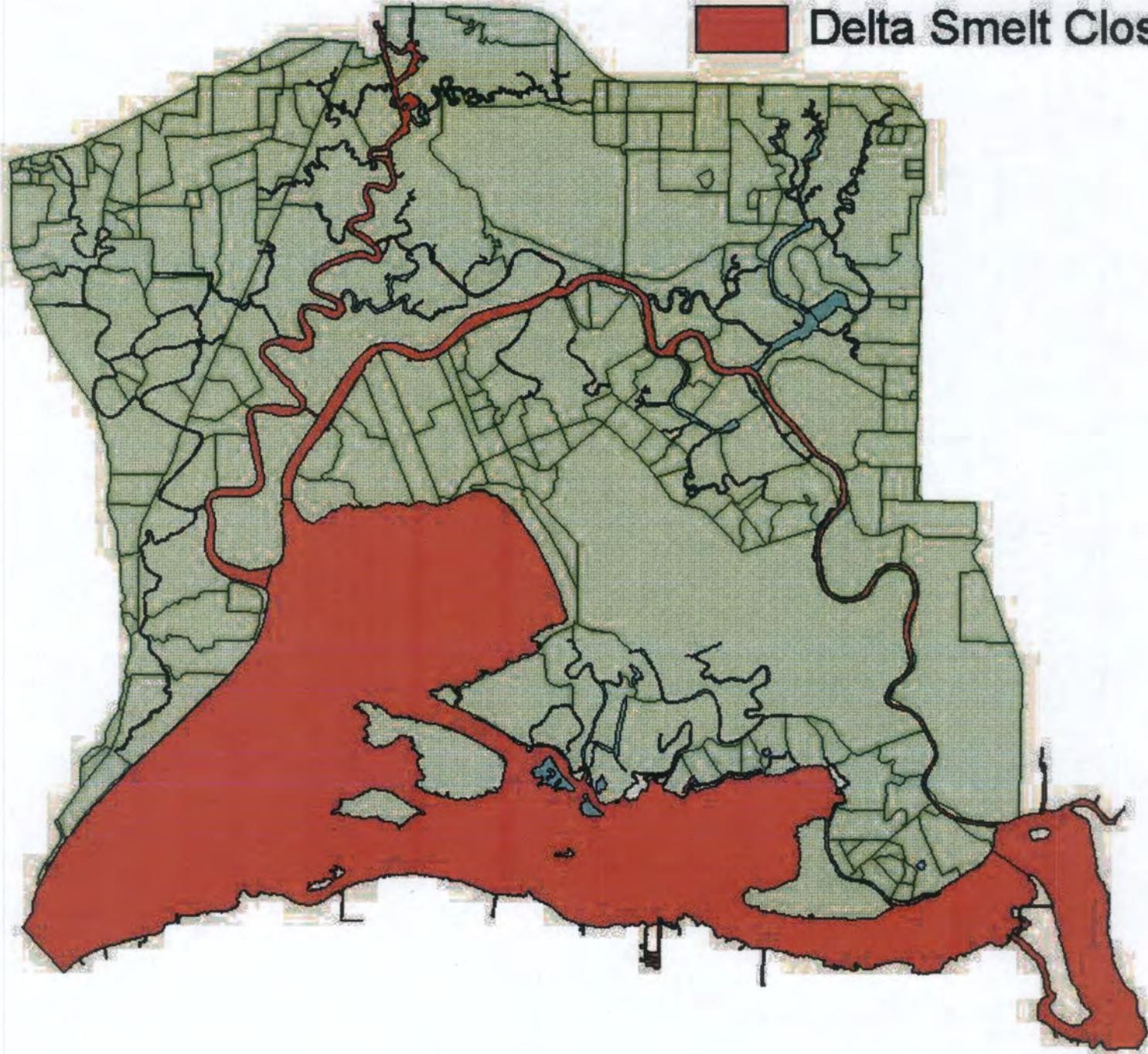
<p>Purpose: Conduct annual wetland maintenance activities to protect and enhance Suisun Marsh managed wetlands.</p> <p>Datum: MLLW</p> <p>Property Owners:</p> <ol style="list-style-type: none"> 1. Suisun Resource Conservation District (SRCD) and private landowners 2. California Department of Fish and Wildlife (DFW) 3. California Department of Water Resources (DWR) 	<p>TYPICAL CROSS SECTIONS</p> <p>No Scale</p> <p>Location: Suisun Marsh - Near Fairfield CA.</p> <p>At: Individually Owned State and Private Properties</p> <p>County: Solano State: CA</p>	<p>Application By:</p> <ol style="list-style-type: none"> 1) SRCD: 2544 Grizzly Island Rd. Suisun CA. 94585 2) DFW: 2109 Arch-Airport Rd. Suite 100, Stockton CA. 95206 3) DWR: 3500 Industrial Blvd. West Sacramento, CA. 95691 4) U.S. Bureau of Reclamation 801 I St. Suite 140, Sacramento CA. 95814 <p>Sheet 6 of 7 Date: 6/26/13</p>
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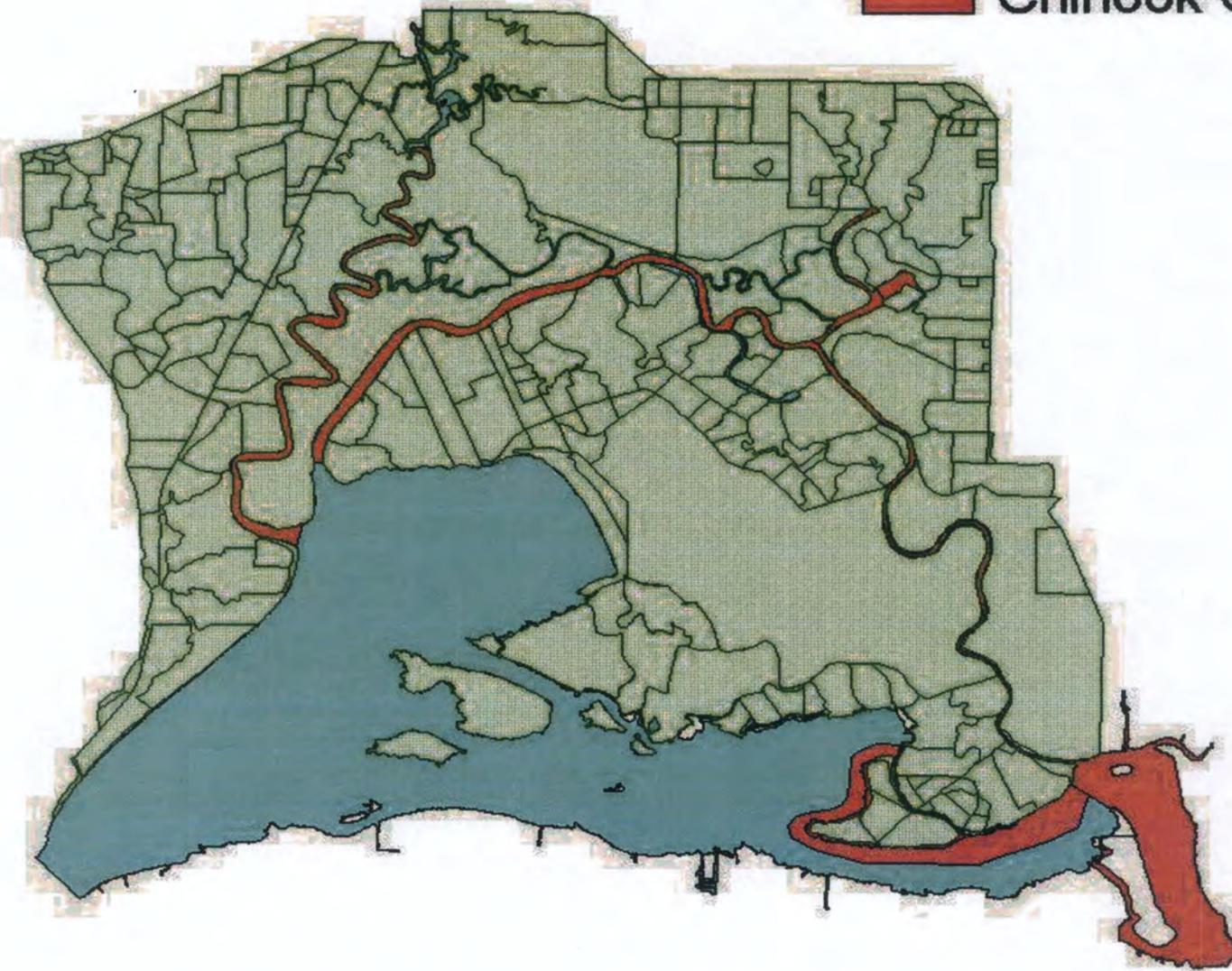
Typical Duck Blind and Blind Island Cross Section

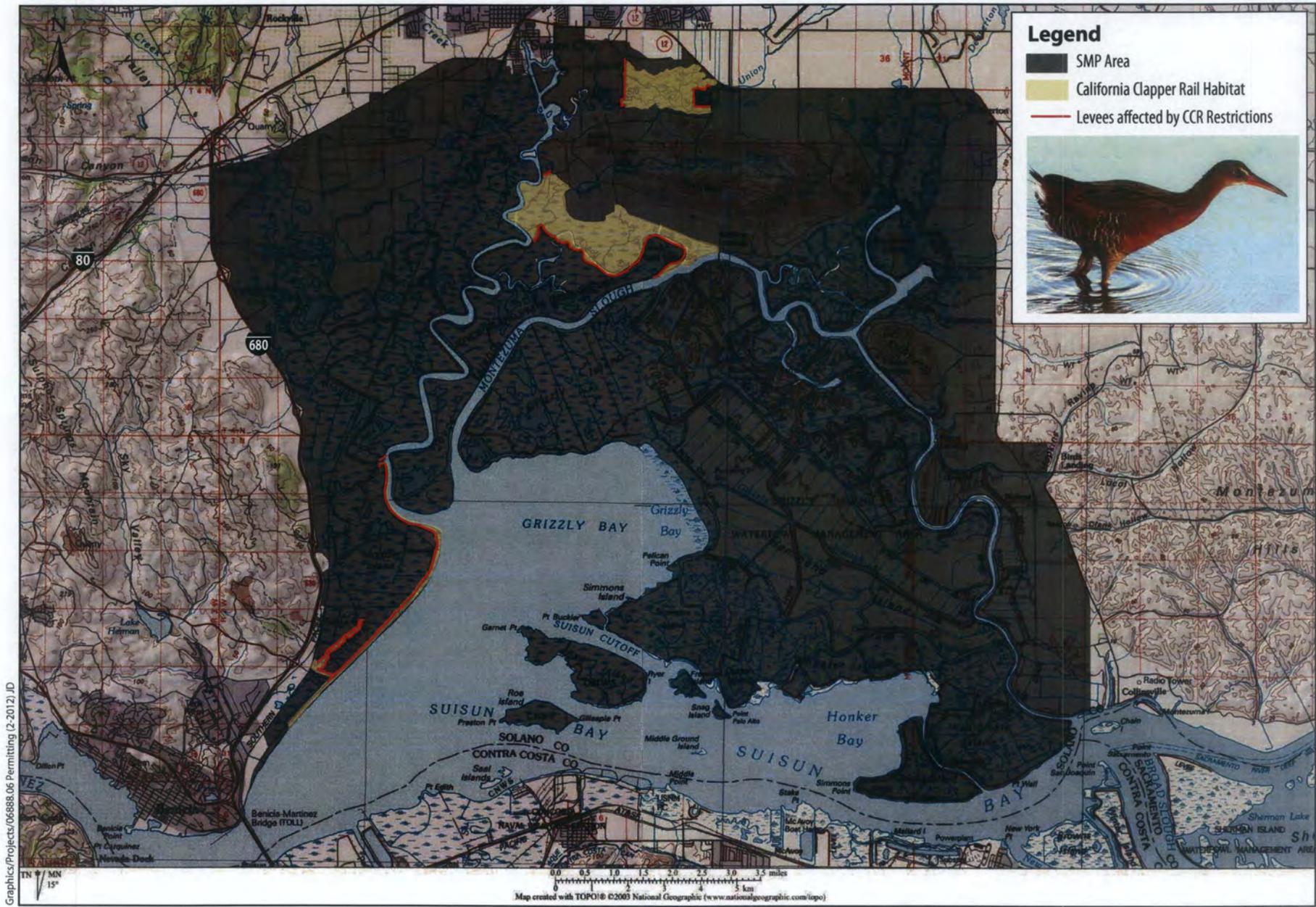
<p>Purpose: Conduct annual wetland maintenance activities to protect and enhance Suisun Marsh managed wetlands. Datum: MLLW Property Owners: 1. Suisun Resource Conservation District (SRCD) and private landowners 2. California Department of Fish and Wildlife (DFW) 3. California Department of Water Resources (DWR)</p>	<p>PLAN VIEW & TYPICAL CROSS SECTIONS No Scale Location: Suisun Marsh - Near Fairfield CA. At: Individually Owned State and Private Properties County: Solano State: CA</p>	<p>Application By: 1) SRCD: 2544 Grizzly Island Rd. Suisun CA. 94585 2) DFW: 2109 Arch-Airport Rd. Suite 100, Stockton CA. 95206 3) DWR: 3500 Industrial Blvd. West Sacramento, CA. 95691 4) U.S. Bureau of Reclamation 801 I St. Suite 140, Sacramento CA. 95814 Sheet 7 of 7 Date: 6/26/13</p>
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 Delta Smelt Closure Areas



 Chinook Closure Areas





Graphics/Projects/068888.06 Permitting (2-2012).JD

Figure 2
California Clapper Rail Habitat in Suisun Marsh

San Francisco Bay Regional Water Quality Control Board

June 27, 2013
CIWQS Place ID: 792443
CORPS FILE NO. 2012-00258N

Sent via electronic mail: No hardcopy to follow

Suisun Resource Conservation District
2544 Grizzly Island Road
Suisun, CA 94585
Attention: Mr. Steven Chappell
SChappell@SuisunRCD.org

CA Division of Fish and Wildlife
4001 N. Wilson Way
Stockton, CA 95205
Attention: Mr. James Starr
Jim.Starr@wildlife.ca.gov

Department of Water Resources
Division of Environmental Services
3500 Industrial Blvd.
Sacramento, CA 956913
Attention: Ms. Kristin Garrison
Kristin.Garrison@water.ca.gov

U.S. Bureau of Reclamation
801 I Street, Suite 140
Sacramento, CA 95814
Attention: Ms. Becky Victorine
rvictorine@usbr.gov

**SUBJECT: CONDITIONAL WATER QUALITY CERTIFICATION FOR THE REGIONAL
GENERAL PERMIT NUMBER 3 REISSUANCE PROJECT, SUISUN MARSH,
SOLANO COUNTY**

Dear Ladies and Messers:

We have reviewed the water quality certification application submitted by the Suisun Resource Conservation District (SRCD) on behalf of CA Department of Fish and Wildlife (CDFW), the Department of Water Resources (DWR), U.S. Bureau of Reclamation

(Reclamation), and SRCD (Applicants) for the proposed Regional General Permit Number 3 Reissuance Project (Project) in Suisun Marsh. We have determined that the Project, as proposed, will not violate State water quality standards, and accordingly issue conditional Clean Water Act Section 401 water quality certification for the Project. You have applied for U.S. Army Corps of Engineers (Corps) authorization under a Regional General Permit Number 3 (RGP3) pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403).

Project Description: The Applicants propose to renew a 5 year RGP3 that authorizes the managed wetland operations and maintenance activities in Suisun Marsh. The proposed Project would maintain existing infrastructure and facilities, and improve management capabilities of existing wetland units within Suisun Marsh. The Project site encompasses approximately 52,000 acres of managed wetlands in the Primary Management Area in Suisun Marsh (38.154913N, -122.976042W). The Project site covers 158 privately owned duck clubs represented by SRCD, and state properties owned and/or operated by CDFW, DWR, and Reclamation. The proposed Project would continue the authorized operations and maintenance activities with some modifications that would add some new activities that were not covered under the expiring RGP3.

The proposed Project will include the following:

1. Activities in ditches:

- Excavation from existing primary and secondary ditches and creation of new primary or secondary ditches. New activities would be associated with 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. 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;
- Maintenance of existing spreader ditches and creation of new spreader ditches;
- Replacement of rip-rap on interior ditch banks and placement of new rip-rap 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:

- Repair of interior and exterior levees. 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. Placement of up to 1.5 cubic yards of levee material per linear foot annually on the levees. Also, placement of up to 1.5 cubic yards of levee material per linear foot annually for exterior levee maintenance for each permittee;
- Replacement of existing rip-rap on exterior levees, placement of new rip-rap, and installation of alternative bank protection controls. A new activity 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;

- Coring of levees;
- Installing, repairing, or reinstalling bulkheads on exterior levees;
- Maintenance of existing roads.

3. Activities in managed wetlands:

- Grading, creating drainage swales and loafing islands, and raising the elevation of managed wetlands;
- Discing;
- Installation of permanent and portable pumps and pump platforms;
- Relocation or installation of duck hunting blinds;
- Construction of cofferdams in managed wetlands.

4. Activities associated with water control structures:

- Replacement and maintenance of water control structures;
- Installation of new interior or exterior water control structures;
- Installation of fish screens;
- Removal of floating debris;
- Suisun Marsh salinity control gate repair and maintenance. A new activity conducted by DWR and Reclamation;
- Roaring River Distribution System fish screening cleaning, repair and maintenance. A new activity conducted by DWR and Reclamation.

5. Salinity monitoring – new activities to be conducted by DWR and Reclamation:

- Salinity monitoring, station maintenance, repair, and replacement. It would include equipment maintenance such as parts replacement, calibration, and cleaning. Many of these activities would be 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;
- Salinity monitoring, station relocation, installation, and removal. 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.

Runoff from the Project site discharges into Suisun Bay. The Project is in the Suisun Bay hydrologic unit 207.10.

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 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.

The operations in the managed wetlands often result in discharges of water with low dissolved oxygen (DO) less than 5 mg/l and high methylmercury (MeHg) to tidal sloughs primarily during the initial fall flood-up period. Past low DO events resulted in fish kills in tidal sloughs in the northwest Marsh. The Peytonia Slough, Boynton Slough, Goodyear Slough, Cordelia Slough, and the upper reaches of Suisun Slough have exhibited the most significant low DO problems.

Water Board staff finds that the Project proponents have taken appropriate steps to avoid and then to minimize impacts, as required by the San Francisco Bay Basin Water Quality Control Plan (Basin Plan).

Mitigation: Permanent and temporary impacts related to the current operation and maintenance of managed wetlands in the proposed Project area have been offset by the Suisun Marsh Mitigation Agreement of 2005. Under the agreement, the Applicants continue to preserve, manage and maintain 2500 acres of managed and tidal wetlands in Suisun Marsh as conservation areas. The Applicants will implement appropriate best management practices (BMPs) to minimize erosion, sedimentation, and pollutant transport to waters of the State while conducting the permitted activities.

The CDFW and SRCD staff prepared a Conceptual Model for Managed Wetlands in Suisun Marsh in 2007. The document describes existing conditions and operations on managed wetlands in Suisun Marsh. The Applicants have participated in a 2-year study in Suisun Marsh that resulted in the Final Evaluation Memorandum Strategies for Resolving Low Oxygen and Methylmercury Events in Northern Suisun Marsh (Report), dated May 2011. The study involved intensive field data collection in selected managed wetlands and their adjacent tidal sloughs with previously documented low DO and high MeHg concentrations. The study evaluated effectiveness of some BMPs related to water management operations, and soil and vegetation management practices. The Report provides specific information about BMPs for the initial flood-up period, which also involves maximizing the use of Fairfield-Suisun Sewer District treated wastewater. Additionally, the Report provides recommendations for implementation of selected BMPs that have improved water quality in the study area, the need for further evaluations, and the need to develop new site specific activities.

The Applicants have been collaborating with the Water Board staff to establish technically feasible BMPs to attain water quality standards in Suisun Marsh. This collaboration is expected to continue while working on a multi pollutant Total Maximum Load (TMDL) to address dissolved oxygen and mercury problems in Suisun Marsh. When completed and

approved, the TMDL may impose additional requirements necessary to improve water quality in Suisun Marsh.

CEQA: The Suisun Marsh Habitat Management, Preservation, and Restoration Plan EIS/EIR was prepared by the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, and CA Department of Fish and Game in November 2011. On December 22, 2011, CDFW filed a Notice of Determination of CEQA compliance (SCH#2003112039).

California Wetlands Portal: It has been determined through regional, state, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the State's No Net Loss Policy for wetlands, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, we require that the Applicant use the California Wetlands Form to provide Project information related to impacts and mitigation/restoration measures (see Condition No. 10 of this Certification). An electronic copy of the form and instructions can be downloaded at: <http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml>. Project information concerning impacts and mitigation/restoration will be made available at the web link: <http://www.californiawetlands.net>.

Certification: I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification. The following conditions are associated with this certification:

1. The Project shall be constructed in conformance with the Project description in the application materials, which were received over the period July 20, 2012 through June 18, 2013. Any additional work or variation from the described work is not authorized unless approved in writing by the Water Board Executive Officer prior to implementation.
2. No debris, soil, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or petroleum products or other organic or earthen material shall be allowed to enter into, or be placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into waters of the State.
3. Disturbance or removal of vegetation shall be minimized. The Project site shall be stabilized through incorporation of appropriate BMPs, including the successful re-

establishment of native vegetation to enhance wildlife habitat values, and to prevent and control erosion and sedimentation.

4. No equipment shall be operated in areas of flowing or standing water. No fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where accidental discharge to waters of the State may occur.
5. The Certification does not allow for the take, or incidental take, of any special status species. The Applicants shall utilize the appropriate protocols, as approved by CDFW, NMFS, and/or FWS, to ensure that project activities do not adversely impact water quality or the beneficial use of the Preservation of Rare and Endangered Species.
6. The Applicants shall implement water management and vegetation BMPs based on the Conceptual Model for Managed Wetlands in Suisun Marsh dated 2007, the Final Evaluation Memorandum Strategies for Resolving Low Oxygen and Methylmercury Events in Northern Suisun Marsh dated May 2011, and other new scientific information and regulatory requirements. The Applicants shall describe implemented actions and the effectiveness of BMPs in the annual report required under the Condition No. 8.
7. The Applicants shall propose a monitoring plan to measure DO concentrations in selected sloughs beginning in fall 2013. The monitoring should start one week prior to the fall flood-up cycle of the managed wetlands in tidal sloughs that have already exhibited significant low DO levels. The sloughs to be monitored are: Peytonia Slough, Boynton Slough, lower Cordelia Slough, Goodyear Slough, and the upper reaches of Suisun Slough north of Volanti Slough. Monitoring shall continue until mid-November when the temperatures are low. The DO monitoring must include locations at managed wetlands, and upstream and downstream of major points of discharge in the tidal sloughs. The sampling frequency and spatial extent must be sufficient to determine ambient DO levels before the discharge occurs and to determine whether water quality objectives for DO in the receiving waters within the discharge area are met after the release of water from the managed wetlands. No later than August 15, 2013, the Applicants shall submit to the Water Board Executive Officer for review and approval a workplan for DO monitoring in the northwest Suisun Marsh.
8. The Applicants shall submit annual reports acceptable to the Executive Officer no later than March 31, starting in 2014. The annual reports shall describe activities performed during the previous calendar year. The annual reports must comprise the following: (a) description of managed wetlands operation and maintenance activities performed as authorized by the RGP3, including an estimate of the acreage of wetlands temporarily impacted, any new control measures used during the previous year to further minimize impacts to jurisdictional waters from permitted activities, and any new measures planned for the current year to further minimize these impacts; (b) detailed account of the implemented management actions and the

effectiveness of BMPs listed in the Condition No.6; (c) summarize the results of the DO monitoring including Executive Summary, description of the BMPs that were implemented to address low DO concentrations in discharges from managed wetlands, location of the BMPs, and the level of implementation. If monitoring shows that DO levels in the sloughs are not meeting the water quality standards established in the Basin Plan, then the report shall identify additional or improved BMPs that will be implemented, and/or at an increased level of implementation, to prevent lowering of DO in the receiving waters below Basin Plan water quality standards. The annual reports shall include an implementation schedule for the additional or improved BMPs.

9. The Applicants shall submit to the Water Board each month a work summary report about activities covered by the Permit that are proposed by various owners/operators by the first day of each month.
10. The Applicants are required to use the California Wetlands form to provide Project information describing impacts and mitigation/restoration measures. Within 14 days from the date of this certification, a completed California Wetlands form shall be submitted electronically to habitatdata@waterboards.ca.gov or shall be submitted as a hard copy to both: 1) the Water Board at the address specified on the letterhead, to the attention of California Wetlands Portal and 2) to the San Francisco Estuary Institute, 4911 Central Avenue, Richmond, CA, 94804 to the attention of California Wetlands Portal.
11. Before using any imported upland soil fill material to reinforce levees adjacent to the aquatic habitat at the Project site, the Applicants shall submit acceptable to the Executive Officer a Source Material Characterization Report demonstrating that the soil is appropriate for reuse in the proposed location(s). The report shall provide information about collected and test soil samples to assure that the reuse of soil at the site is protective of the beneficial uses of waters of the State. The Draft Sediment Screening and Testing Guidelines, available at: <http://www.spn.usace.army.mil/conops/beneficialreuse.pdf> will be used for determining the acceptability of reusing imported soils on site.
12. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 and Section 3867 of the California Water Code (CWC), Title 23 of the California Code of Regulations (23 C.C.R.).
13. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 C.C.R. Subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

14. Certification is conditioned upon total payment of the full fee required in State regulations (23 CCR Section 3833) and owed by the applicant. The fee for the proposed Project is \$1,776.00 and it has been paid in full.

This certification applies to the Project as proposed in the application materials. Please be advised that failure to implement the Project as proposed is a violation of this water quality certification. Violation of water quality certification is a violation of state law and is subject to administrative civil liability pursuant to CWC Section 13350. Failure to meet any condition of a certification may subject you to civil liability imposed by the Water Board to a maximum of \$5000 per day of violation or \$10 for each gallon of waste discharged in violation of the certification. Also, any requirement for a report made as a condition to this action (Condition Nos. 6, 7, 8, 9, 10, 11) is a formal requirement pursuant to CWC Section 13267, and failure to submit, late or inadequate submittal, or falsification of such technical report(s) is also subject to civil liability.

Should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements pursuant to 23 CCR Section 3857.

If you have any questions, please contact Jolanta Uchman at (510) 622-2432, or email JUchman@waterboards.ca.gov.

Sincerely,



William B. Hurley
Acting Division Chief for

Bruce H. Wolfe
Executive Officer

Cc: SWRCB-DWQ, Mr. Bill Orme, Stateboard401@waterboards.ca.gov
US EPA Region 9, Mr. Jason Brush WTR-8, R9-WTR8-Mailbox@epa.gov
USACE SF Regulatory Branch
Ms. Jane Hicks, Jane.M.Hicks@usace.army.mil
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Mr. David Wickens, David.M.Wickens@usace.army.mil
US FWS Mr. Ryan Olah, Ryan_Olah@fws.gov
NMFS Mr. Gary Stern, Gary_Stern@noaa.gov
CDFW Ms. Karen Weiss, Karen.Weiss@wildlife.ca.gov
SF Bay RWQCB Ms. Barbara Baginska, Barbara.Baginska@waterboards.ca.gov

San Francisco Bay Regional Water Quality Control Board

June 4, 2014
CIWQS Place ID 792443

Sent via electronic mail: No hardcopy to follow

Suisun Resource Conservation District
2544 Grizzly Island Road
Suisun, CA 94585
Attention: Mr. Steven Chappell
SChappell@SuisunRCD.org

California Division of Fish and Wildlife
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Stockton, CA 95206
Attention: Mr. James Starr
Jim.Starr@wildlife.ca.gov

Department of Water Resources
Division of Environmental Services
3500 Industrial Blvd.
Sacramento, CA 956913
Attention: Ms. Kristin Garrison
Kristin.Garrison@water.ca.gov

U.S. Bureau of Reclamation
801 I Street, Suite 140
Sacramento, CA 95814
Attention: Mr. Gregory Krzys
gkrzys@usbr.gov

**Subject: Conditional Water Quality Certification for the Suisun Marsh Exterior
Levee Maintenance Dredging Program, Solano County**

Dear Ladies and Messrs.:

We have reviewed the water quality certification application submitted by the Suisun Resource Conservation District (SRCD) on behalf of the California Department of Fish and Wildlife (CDFW), the Department of Water Resources (DWR), U.S. Bureau of Reclamation (Reclamation), and SRCD (Applicants) for the proposed exterior levee maintenance dredging program (Project) in Suisun Marsh. We have determined that the Project, as proposed, will not violate State water quality standards, and accordingly issue conditional Clean Water Act Section

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

401 water quality certification for the Project. You have applied for U.S. Army Corps of Engineers (Corps) authorization under a Letter of Permission pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403).

Project Location

The project is located in 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 (Figure 1). For management purposes, the Marsh is divided into four regions, plus the major Montezuma Slough, which is the boundary between several regions (Figure 2). The dredging program applies to approximately 133.47 of the 199.82 miles of exterior levees that separate the managed wetlands of Suisun Marsh from bays, sloughs, and dredger cuts. The remaining 66.35 miles of exterior levees, defined as “no dredging segments,” have adjacent vegetated berms greater than 50 feet wide, making dredging at these locations impractical. Figure 3 delineates both the active dredging levee segments and the no dredging segments.

Project Description

This Project is 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 Marsh. Other components, such as ditch and levee maintenance activities not involving dredging outboard of exterior levees, managed wetland habitat maintenance, water control structure maintenance, and salinity monitoring are regulated under a separate water quality certification dated June 27, 2013, issued for the Corps’ Regional General Permit Number 3.

The Project purpose is to provide higher quality fill material for exterior levee repairs, and to improve drainage in cut channels, by removing accumulated silt that impairs managed wetland drainage and water control structure tidal operations. The exterior levee system protects thousands of acres of State and private land managed for wildlife habitat, endangered species habitats, Delta water quality, and physical infrastructure such as dwellings, structures, gas wells, power transmission lines, petroleum pipelines, and County roads. Material currently used for levee repairs comes mainly from interior ditch cleaning and pond bottom grading of managed wetlands. This material is typically of poor quality for exterior levee use because it is high in organic matter/peat, requiring more frequent levee maintenance, causing an increase in managed wetland subsidence, and weakening existing levee foundations. Sediment in the adjacent tidal sloughs comprises primarily silts and clays, significantly better material for levee integrity and long-term durability than the peaty soils from managed wetlands.

Implementation of the dredging program will allow private landowners (represented by SRCD), CDFW, and DWR to dredge material from tidal areas adjacent to the exterior levees of Suisun Marsh and use it for levee maintenance and repair. Up to a maximum of 100,000 cubic yards (cy) of material could be dredged from a maximum surface area of 19.83 acres (90,490 linear feet) in major and minor tidal sloughs, dredger cuts, and bays on an annual basis. This equates to a maximum total of 1,000,000 cy of dredged material for the duration of the 10-year Corps Letter of Permission. The annual allotment for dredging within each region of the Suisun Marsh Plan will be allocated between State and private properties, depending on levee needs, and volume

limitations determined by habitat types in adjacent waterways. Dredging will be limited to a maximum of 2.1 cy per linear foot of channel.

Affected Waterways – Dredging will occur in the following tidal aquatic habitats located adjacent to the levees to be maintained:

- Bays – Open water areas that extend offshore from levees or the water side of tidal emergent vegetation. Major bays in the Suisun Marsh region include Suisun, Grizzly, and Honker Bays to the Contra Costa County line, and Little Honker Bay.
- Major Sloughs – Montezuma and Suisun Sloughs are classified as major. These two sloughs have a combined acreage of 2,212 acres and consist of both shallow and deep channels.
- Minor Sloughs – Minor sloughs include Cordelia, Goodyear, Chadbourn, Peytonia, Boynton, Hill, Cut off, Cross, Nurse, First Mallard, Second Mallard, and Denverton. Minor sloughs are made up of shallow channel habitats and have a combined acreage of 1,108 acres.
- Dredger Cuts – These areas are tidally inundated, manmade borrow ditches adjacent to the toe of the existing exterior levees, isolated from the adjacent minor and major sloughs by vegetated berms. Dredger cuts are distributed throughout the Marsh and are very shallow channels.

The following table shows the proposed annual dredge volume per waterway type in each Marsh region.

Proposed Dredging Volume per Waterway Type and Marsh Region

Waterway Type	Region 1 Volume (cy)	Region 2 Volume (cy)	Region 3 Volume (cy)	Region 4 Volume (cy)	Montezuma Slough Volume (cy)	Total Volume (cy)
Bays	0	0	100	4,000	0	4,100
Major Sloughs	2,100	10,700	0	0	16,000	28,800
Minor Sloughs	21,600	8,900	3,000	2,400	0	35,900
Dredger Cuts	6,300	2,700	4,500	10,500	7,200	31,200
Total	30,000	22,300	7,600	16,900	23,200	100,000

Dredged material will be used for major levee maintenance, which involves topping the levee crown and backslope, and minor levee maintenance, which involves only topping the levee crown. Approximately 50% of the annually dredged material will be used for major levee maintenance and 50% will be used for minor levee maintenance. Levees requiring more extensive repairs fall outside the scope of the Project and will be regulated via individual project certifications.

Dredging Program Administration - SRCD will act as the first-line gatekeeper for dredging applications. Landowners will submit dredging request applications to SRCD and CDFW in the early part of each year (January 1 through April 30). The applications will need to contain all necessary information to determine compliance with the Program, including a detailed map of the proposed site, dimensions of the levee, the cubic yardage requested, description of the dredging source site conditions (waterway type and region), photo documentation of current conditions, type of equipment proposed to conduct the work, and GPS coordinates of the extent of the proposed project. SRCD will sort the applications within each of the Marsh's regions to compare the sum of the landowners' annual dredging requests with the annual regional dredging caps. SRCD will also review all applications for completeness and check the past history of dredging program participation at each site. In March of each year, SRCD, CDFW, and the regulatory agencies will meet to discuss annual summary report for the previous year so that they can determine whether the modifications to the program are necessary before the next years' work and administration are initiated.

Between May 1 and May 30, SRCD and CDFW will conduct inspections of applicants' sites to assess current conditions, account for any special considerations such as listed species' restrictions, ensure avoidance of sensitive areas, and review proposed dredging methods for suitability. SRCD will preliminarily allocate dredging volumes to the applicants and submit these recommended volumes and locations in an annual dredging work plan approval request to the Water Board per Condition 1 of this certification. Water Board staff will review the work plan and provide written concurrence.

Dredging work activities will be completed between August 1 and November 30 of each year, or between September 1 and November 30 if adjacent to designated exterior levee segments to avoid impacts to breeding California clapper rails. SRCD will conduct post-construction inspections and collect work-completed reports from each of the permittees. Prior to January 31, SRCD will submit annual dredging activity summary reports to Water Board staff as described in Condition 6.

Dredging Equipment/Methods – Two methods of dredging are proposed: 1) land-based long reach excavator working from the crowns of the levees, and 2) floating barge-mounted excavator or clamshell bucket dredge working from the water. Dredging from a floating barge has the additional advantages of providing water access to the site and allowing the removal of sediment from deeper areas of the sloughs and channels due to increased reach and distance from the levee crown.

Regardless of the equipment/method used for dredging, the dredged material, after initial placement on the levee, will be smoothed and compacted with the excavator or clamshell bucket, creating a uniform layer that may range from 1 to 2 feet deep. After 2 to 3 months of drying time, the dredged material will be disked and graded to integrate it with the soil in the existing levee.

Navigational Dredging Sources of Material - Navigational dredging projects in the San Francisco Bay and Delta regions may also provide a source of levee maintenance material provided it is adequately characterized for physical and chemical suitability (e.g., it is fined grained, with minimal organic carbon and has pollutants at or below background concentrations). Sediment characterization will take place under the direction of the Dredged Material Management Office,

which consists of several State and federal regulatory agencies, including the Water Board, with jurisdiction over dredging and dredged material disposal and beneficial reuse. The major constraints to importing dredged material from outside the Marsh are limited draft and waterside access for barge offloading onto the levees, and the added cost of transporting and offloading imported material.

Fish Screen Dredging - There are sixteen fish screens that are part of the water control structures located in the Marsh. The screens experience significant siltation problems. Silt is deposited around these screens, which impedes the operation of the screens and screen-cleaning brushes. Every few years a relatively small amount of material must be removed from the fish screen basins (about 20 to 100 cubic yards each) by dredging. (This amount is included in the total 1,000,000 cubic yards proposed for dredging in the Marsh for the duration of the Project). Alternative measures (e.g., trying to move silt by hand) have been ineffective. Dredging around fish screens will be done during low tide to minimize in-water work and minimize turbidity. Dredged sediment will be placed on the crown or landside slope of the exterior levee adjacent to the fish screen. In instances where material cannot be used adjacent to the dredging site, the material may be used on other levees within Suisun Marsh, following the same environmental commitments as identified in the SMP.

Impacts

The Project could impact up to a maximum of 19.83 acres or 90,446 linear feet (17.13 linear miles) of waters of the U.S. and State per year. These waters provide habitat for several federal and State threatened and endangered species that could be adversely impacted by dredging.

Dredging activities will be tracked by SRCD to ensure dredging does not occur more often than once every 3 years on any single levee segment and does not remove material deeper than 4 feet (relative to the pre-dredge sediment surface elevation) per dredging cycle.

Benthic Disturbance - Dredging will disturb benthic habitat and remove sediment-dwelling invertebrate prey organisms which provide forage for many fish species in Suisun Marsh. NOAA National Marine Fisheries Service (NMFS) defines recovery as the later phase of benthic community development following disturbance, when species that inhabited the area prior to disturbance begin to re-establish. Rates of recovery can vary from several months to several years based on various location-specific physical factors. Because dredging will not occur at the same location more than once in a 3-year period, on a rolling basis, some level of benthic invertebrate recovery will occur between dredging events. Benthic monitoring proposed in the SMP (SMP Biological Assessment Appendix E) will provide further information regarding dredging impacts to benthic communities and their rates of recovery.

Wetland Fill - Major levee repair will not result in the widening of the exterior levee toe on the inboard (managed wetland) side; therefore no dredged material will be intentionally discharged into wetlands considered waters of the U.S. or waters of the State. Material used for backslope stabilization during major levee maintenance could, however, incidentally impact waters of the U.S. and State, but impacts would be temporary.

The U.S. Fish and Wildlife Service (USFWS) and NMFS issued Biological Opinions on June 10, 2013, and July 3, 2013, respectively, in response to the Biological Assessments submitted by Reclamation. The Applicants submitted an incidental take permit (ITP) application to CDFW on February 21, 2014. The ITP is currently under preparation. The Applicants will provide a copy of the ITP to Water Board staff immediately after CDFW issues it.

Avoidance, Minimization, and Mitigation Measures

The following is a summary (partial list) of the measures that the Applicants will perform to avoid and minimize impacts as conditions of this certification.

Timing Restrictions

- Dredging will be performed during the window of August 1 through November 30 when certain special status fish species (delta smelt and listed salmonids) are less likely to be in the Marsh.
- To avoid the disturbance of California clapper rails, activities within or adjacent to designated tidal marsh areas would be avoided during the breeding season from February 1 through August 31.

Construction Practices - Best management practices (BMPs) to avoid and minimize impacts to the aquatic environment will include the following:

- Dredging will not occur in areas that have been tidally restored.
- A berm will be constructed on the channel-side of the levee crown to prevent runoff into adjacent aquatic areas (e.g., bays, major and minor sloughs, and dredger cuts).
- Both emergent and submerge aquatic vegetation will be avoided during dredging activities. No dredging will be allowed in areas that would disturb or remove vegetation.
- Dredging will not be allowed in channels separated from the levees by vegetated berms greater than 50 feet wide. In these areas, the primary source of material for maintenance will come from the adjacent managed wetlands or will be imported from areas outside the Marsh.

Mitigation - Permanent and temporary impacts related to the current operation and maintenance of managed wetlands in the proposed Project area, including maintenance of exterior levees, have been offset by the Suisun Marsh Mitigation Agreement of 2005. Under the agreement, the Applicants continue to preserve, manage, and maintain 2500 acres of managed and tidal wetlands in Suisun Marsh as conservation areas.

Water Board staff finds that the Project proponents have taken appropriate steps to avoid, minimize, and mitigate impacts, as required by the San Francisco Bay Basin Water Quality Control Plan (Basin Plan).

California Environmental Quality Act (CEQA)

USFWS, Reclamation, and CDFW published a final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Suisun Marsh Habitat Management, Preservation, and Restoration Plan on December 6, 2011. On December 22, 2011, CDFW filed a Notice of Determination of CEQA compliance (SCH#2003112039). The Water Board, as a responsible agency under CEQA, has considered the EIS/EIR and finds that the Project, as described above and conditioned by this certification, will not have significant environmental effects that are within the Water Board's purview and jurisdiction.

Certification and General Waste Discharge Requirements

I hereby issue an order certifying that any discharge from the referenced project, as conditioned by this Certification and Order, will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this Water Quality Certification. The following conditions are associated with this certification:

1. The Applicants shall submit an annual dredging work plan to the Water Board at least 60 days prior to the start of dredging activity. Each annual work plan shall include, but not be limited to, the following for each dredging site:
 - A detailed map of the proposed site
 - Dimensions of the levee
 - Proposed dredge volume
 - Description of the dredging source site conditions (waterway type and region)
 - Photo documentation of current conditions
 - Results of pre-dredge emergent and submerged vegetation surveys showing absence of vegetation in dredging footprint
 - Type of equipment proposed to conduct the work
 - GPS coordinates of the extent of the proposed project
 - Clapper rail surveys, if applicable per condition 7

Dredging shall not commence until Water Board staff has issued written concurrence that the annual work plan is consistent with the Project as described in the application and this certification.

2. Annual dredging volumes shall be allocated between State and private properties, depending on levee maintenance needs, as follows:

Annual Dredging Volume Limits per Waterway Type and Marsh Region

Waterway Type	Region 1 Volume (cy)	Region 2 Volume (cy)	Region 3 Volume (cy)	Region 4 Volume (cy)	Montezuma Slough Volume (cy)	Total Volume (cy)
Bays	0	0	100	4,000	0	4,100
Major Sloughs	2,100	10,700	0	0	16,000	28,800
Minor Sloughs	21,600	8,900	3,000	2,400	0	35,900
Dredger Cuts	6,300	2,700	4,500	10,500	7,200	31,200
Total	30,000	22,300	7,600	16,900	23,200	100,000

3. Screening Procedures for Imported Dredged Material: Data characterizing the quality of all navigational dredged material (e.g., Bay sediments) proposed for use on Marsh exterior levees shall be submitted to Water Board staff for review and approval prior to placement. This review shall be coordinated through the Dredged Material Management Office (DMMO). Sediment characterization shall follow the protocols for bulk sediment chemistry analysis specified in:

- The DMMO guidance document “Guidelines for Implementing the Inland Testing Manual in the San Francisco Bay Region” (Corps Public Notice 01-01, or most current version); and,
- The Water Board May 2000 staff report “Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines,” or most current revised version.

Only material that meets wetland surface quality chemistry screening guidelines as defined in the Water Board May 2000 staff report listed above may be used for levee rehabilitation and maintenance. Modifications to these procedures may be approved on a case-by-case basis pending the Applicants’ ability to demonstrate that the dredged material is unlikely to adversely impact water quality and the beneficial uses of adjacent water bodies.

4. Dredging shall be limited to a maximum of 2.1 cy per linear foot of channel, a depth of 4 feet below the pre-dredge sediment surface elevation, and shall not occur more than once every three years, on a rolling basis, on any single levee segment, as delineated by the levee segment boundaries shown in Figure 3.
5. No emergent or submerged aquatic vegetation shall be removed during dredging activities.
6. The Applicants shall submit annual dredging activity summary reports no later than January 31 of the year following the year in which the dredging activity takes place. The annual reports shall describe dredging and dredged material placement activities performed during the previous calendar year and shall include, but not be limited to the following:
 - Total annual landowner-requested dredging volume

- Total authorized volume
 - Breakdown of dredging activities by region and waterway type, including a map of levee segments maintained by dredging and pre- and post-dredging/placement photos for each levee segment
 - Actual dredging work completed, with volume calculations based on the measurement of post construction placed material on the levee crown and backslope.
 - Additional site-specific information for each levee segment as appropriate
7. Dredging activities in all regions of the Marsh shall be limited to the work windows established by CDFW, NMFS, and USFWS in their Biological Opinions on the Suisun Marsh Plan, unless written authorization by the appropriate agencies to work outside these windows is provided to Water Board staff in advance of the out-of-window work starting. This condition is a conditional requirement to submit a technical report pursuant to Water Code section 13267.

As shown in the following table, the applicable work window for this dredging project is August 1 through November 30 of any year, unless dredging will occur adjacent to tidal marsh where nesting California clapper rails may be present, in which case the work window is September 1 through November 30.

Species of Concern	Work Window Period	Consulting Agency
Chinook Salmon	June 1 through November 30	NMFS, CDFW ¹
Steelhead Trout	June 1 through November 30	NMFS
Delta Smelt	August 1 through November 30	USFWS, CDFW
California Clapper Rail ²	September 1 through November 30	USFWS, CDFW

¹If a federal agency and CDFW are both listed, CDFW generally defers to the federal agency

²To avoid disturbing California clapper rails during the February 1 through August 31 breeding season

8. This certification does not allow for the take, or incidental take, of any special status species. The Applicants are required, as prescribed in the State and federal endangered species acts, to consult with the appropriate agencies prior to commencement of the project. The Applicants shall use the appropriate protocols, as approved by DFW, NMFS, and/or USFWS, to ensure that project activities do not adversely impact Preservation of Rare and Endangered Species, a beneficial use of San Francisco Bay and its tributaries as set forth in the Basin Plan.
9. The Applicants shall adhere to Project-applicable Terms and Conditions and Reasonable and Prudent Measures in the *Biological Opinion on the Proposed Suisun Marsh Habitat Management, Preservation, and Restoration Plan and the Project-Level Actions*, dated June 10, 2013 (Ref. No. 08ESMFOO-2012-F-0602-2) issued for the Project by USFWS.
10. The Applicants shall adhere to Project-applicable Terms and Conditions and the Reasonable and Prudent Measures in the *Biological Opinion on the Suisun Marsh Long-*

Term Habitat Management, Preservation, and Restoration Plan, dated July 3, 2013 (Tracking No. 2012-2390) issued for the Project by NMFS, and the Conservation Recommendations in the Essential Fish Habitat Consultation also issued for the Project by NMFS on July 3, 2013.

11. The Applicants shall submit an electronic copy of the CDFW Incidental Take Permit to Water Board staff immediately after it is issued and adhere to the conditions for the Project.
12. Dredging around fish screens shall be conducted within 1.5 hours of Mean Lower Low Water to minimize in-water work and minimize turbidity. After completion of dredging, fish screens shall be opened as the tide returns, to allow residual suspended sediment to be drawn into the adjacent managed wetlands. In instances where the dredged material from fish screen maintenance cannot be placed on the crown or landside slope of the exterior levee adjacent to the fish screen, it may be used on other levees within the Marsh.
13. Dredging shall be avoided within 200 feet of storm drain outfall and urban runoff discharge locations, unless pre-dredge contaminant testing (i.e., bulk sediment chemistry) is conducted in coordination with the DMMO per Condition 3 above.
14. Dredging shall not occur in areas where tidal wetland habitat restoration has been performed.
15. Releases of discharge water from managed wetlands shall cease for at least 3 days following dredging and dredged material placement on adjacent exterior levees.
16. No dredging or construction related wastes, debris, petroleum products, or hazardous materials shall be allowed to enter into waters of the State, or be placed where they may be washed by rainfall or runoff, or otherwise discharge into waters of the State. When dredging and levee maintenance construction activities are completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into waters of the State.
17. A berm shall be constructed on the channel-side of the levee crown sufficient to prevent runoff into adjacent aquatic habitats.
18. The Applicants or their representative shall notify Water Board staff immediately by telephone and e-mail whenever an adverse condition occurs as a result of this activity. An adverse condition includes, but is not limited to, a violation or threatened violation of conditions of this certification, or a release of petroleum products or toxic chemicals to waters of the State. Pursuant to Water Code section 13267, a written notification of adverse condition shall be submitted to the Water Board within 30 days of occurrence. The written notification shall identify the adverse condition, describe the action necessary to remedy the condition, and specify a timetable, subject to the modifications of the Water Board, for remedial actions.

19. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
20. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR Subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
21. This certification is valid through December 31, 2024. The SRCD is the applicant acting on behalf of numerous public and private landowners in the Suisun Marsh. At this time, the specific dredging locations, volumes, and participating landowners for the 10-year dredging program have not been identified, and the SRCD is not financially capable of prepaying the full application fee. Therefore, dredging more than 100,000 cy will require one or more amendments to the certification and payment of additional fees assessed per the increased volume of dredging according to the dredge and fill certification fee schedule in place at the time each amendment is approved. The cumulative sum total fee for the 10-year project, which would have a maximum dredge volume of 1,000,000 cy, shall not exceed the maximum fee in effect at the time each amendment is approved.
22. Certification is conditioned upon full payment of the required fee as set forth in 23 CCR Section 3833. The total fee required for certification of the first phase of the subject project (i.e., of up to 100,000 cy) is \$15,944, based on the fee schedule in effect in July 2013 when Water Board staff determined the application to be complete. Water Board staff received payment in full on May 13, 2014.

Conclusion

This certification applies to the project as proposed in the application materials. Please be advised that failure to implement the project as proposed is a violation of this water quality certification. Any violation of water quality certification conditions is subject to administrative civil liability pursuant to Water Code sections 13268 and 13350. Failure to meet any condition of a certification may subject the Applicants to civil liability imposed by the Water Board to a maximum of \$5,000 per violation day for violations of section of Water Code 13267 technical report requirements and \$5,000 per violation day or \$10 for each gallon of waste discharged in violation of this certification.

We anticipate no further action on this request. Should new information come to our attention that indicates a water quality problem with this project, the Water Board may issue waste discharge requirements pursuant to 23 CCR section 3857.

If you have any questions, please contact Elizabeth Christian at (510) 622-2335 or by email to echristian@waterboards.ca.gov.

Sincerely,

For Bruce H. Wolfe
Executive Officer

Attachments:

- Figure 1. Suisun Marsh Dredging Program Project Location Map
- Figure 2. Suisun Marsh Regions
- Figure 3. Suisun Marsh Levee Segments

cc w/attachments (*all via email*):

State Water Resources Control Board (Stateboard401@waterboards.ca.gov)

US EPA, WTR-8 (R9-WTR8-Mailbox@epa.gov)

USACE, SF Regulatory Branch (David Wickens, David.M.Wickens@usace.army.mil)

US FWS (Ryan Olah, Ryan_Olah@fws.gov)

NMFS (Gary Stern, Gary_Stern@noaa.gov)

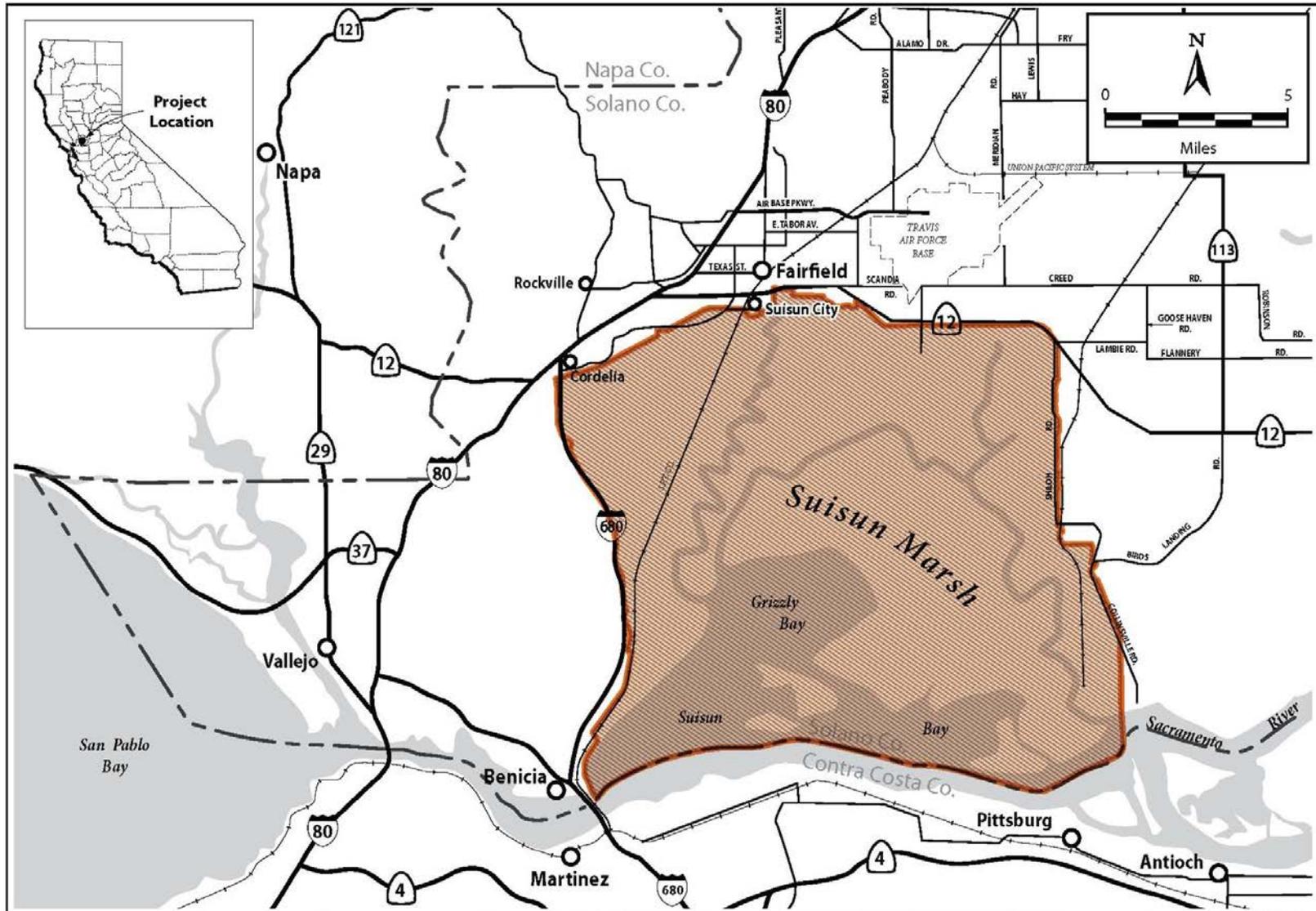


Figure 1. Suisun Marsh Dredging Program
Project Location Map

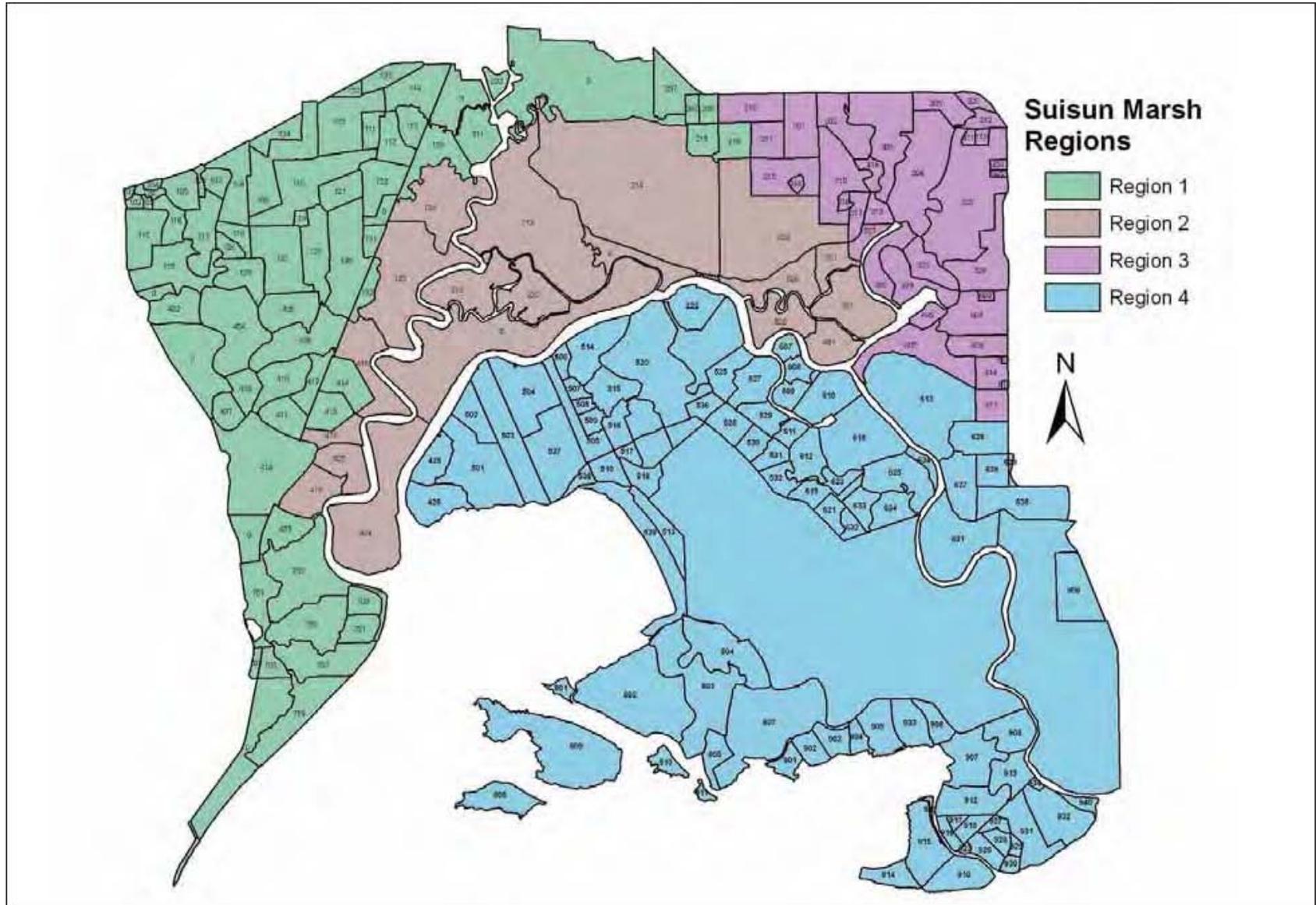


Figure 2. Suisun Marsh Regions

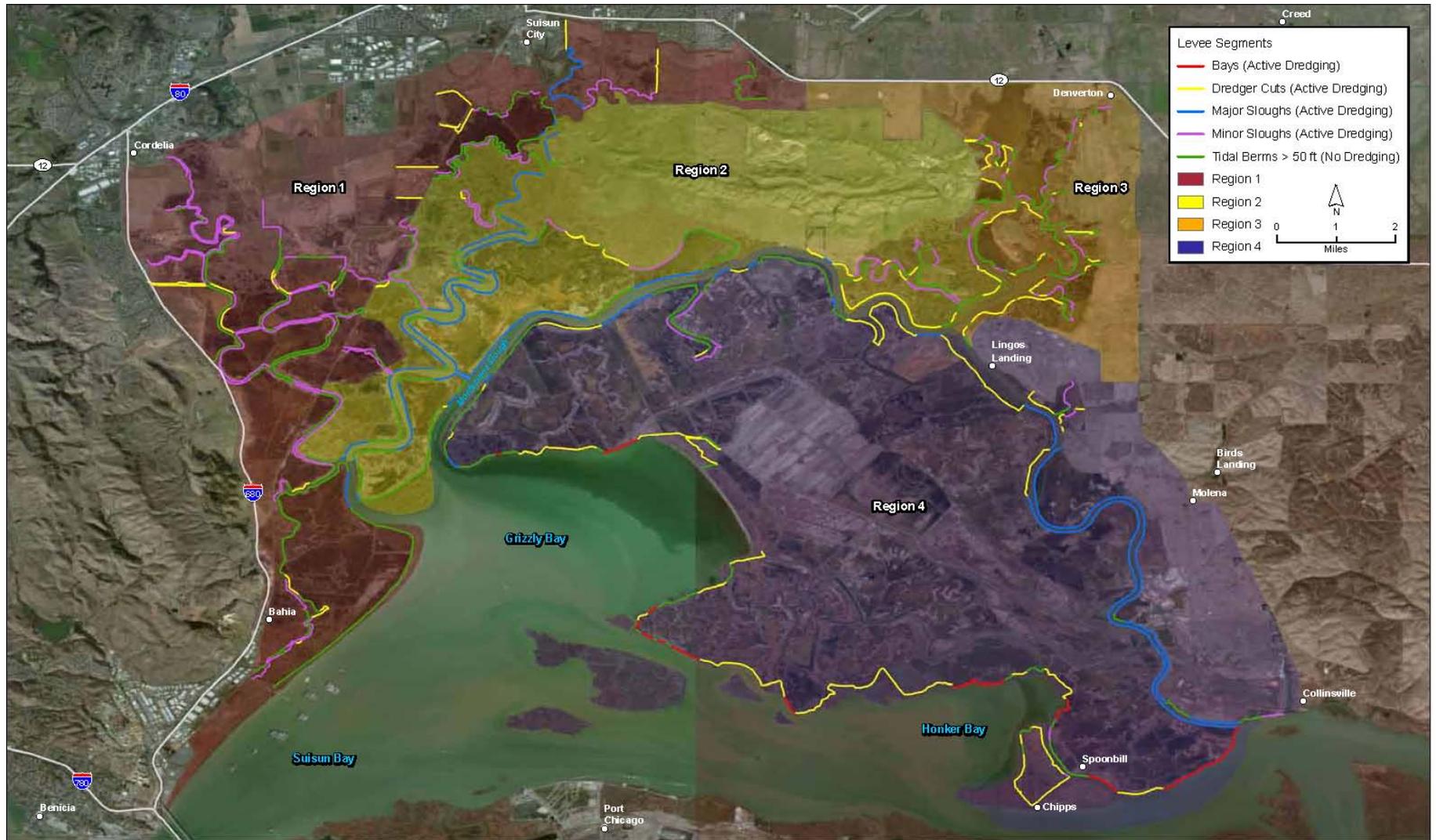


Figure 3. Suisun Marsh Levee Segments