



Regional General Permit 5

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

SMALL EROSION REPAIR PROGRAM (SERP)

EFFECTIVE DATE: May 6, 2014

EXPIRATION DATE: May 6, 2019

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee. The term "this office" refers to the U.S. Army Corps of Engineers, Sacramento District.

The U.S. Army Corps of Engineers, Sacramento District (District), hereby issues Regional General Permit 5 for the California Department of Water Resources Small Erosion Repair Program (SERP)

ISSUING OFFICE: U.S. Army Corps of Engineers, Sacramento District

ACTION ID: SPK-2006-00228

PERMITTEE: California Department of Water Resources, Attn: Mr. Jon Ericson, 3310 El Camino Avenue, Sacramento, California 95821

AUTHORITIES: Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the United States.

PURPOSE: To streamline the authorization for the repair of small erosion sites along levees maintained by the California Department of Water Resources (DWR) within the Sacramento River Flood Control Project (SRFCP). This permit would allow DWR to conduct work in waters of the United States associated with activities necessary to repair erosion damages to levees in a timely fashion to prevent further damages and avoid associated public safety risks and environmental impacts. The Small Erosion Repair Program (SERP) is a collaborative interagency effort to develop a streamlined regulatory review and authorization process that will facilitate implementation of annual repairs of small erosion sites on levees within the SRFCP area. SRFCP area contains approximately 900 to 1,000 miles of levees. For the initial 5-year SERP effort, the coverage area is a subset of the SRFCP and represents approximately 300 miles of levees maintained by the DWR.

LOCATION: The SERP coverage area is approximately 300 miles of levees on portions of the Sacramento River and its tributaries, including all or portions of the following waterways: Butte Creek; portions of Cache Creek; Cherokee Canal; Colusa Bypass; Colusa Main Drain (northern portion only); portions of the Feather River; portions of Putah Creek; Sacramento Bypass; portions of the Sacramento River; Sutter Bypass; Tisdale Bypass; Wadsworth Canal; Willow Slough Bypass; portions of Yolo Bypass; and the East and West Interceptor Canals. See the enclosed map titled, "Phase I SERP Area."

ACTIVITIES COVERED: This RGP authorizes the discharge of up to a maximum of 72,000 cubic yards (5 year total) of soil filled riprap, to repair a maximum of 15 sites each year over 5 years. Each SERP site would involve a maximum of 0.5 acre (and 1,000 linear feet) of disturbance below the

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www.spk.usace.army.mil/Missions/Regulatory.aspx

ordinary high water mark/mean high water mark/high tide line (OHWM/MHWM/HTL) for repair of small erosion sites along portions of the SRFCP. No project site would exceed 0.5 acres of disturbance or would extend for more than 1,000 linear feet.

TERMS: Specifically, this permit authorizes the DWR to implement the SERP over a 5-year period along the SRFCP in accordance with the conservation-based design standards identified in the SERP Manual, provided the activity meets all of the following criteria:

1. Activities at each SERP site shall not result in impacts to more than 1,000 linear feet and/or 0.5-acre within the jurisdictional limits of waters of the U.S.
2. No site shall take more than two weeks of active (continuous) construction, not including revegetation unless this criterion is waived in writing by the district engineer.
3. No material shall be placed in excess of the minimum needed for erosion protection.
4. The activity shall not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer.
5. No fill material shall be placed in any location, or in any manner, that impairs surface water flow into or out of any water of the United States;
6. The activity shall not be a stream channelization activity.

PRE-CONSTRUCTION NOTIFICATION PROCEDURES:

1. You must submit a completed and signed SERP Project notification form requesting verification under this RGP, which is included in Section 5 of the SERP Manual (Attachment A). To process the notification, the Notification Package, consisting of the form and supporting documents must be completed and submitted to the Sacramento District's Regulatory Division office at 1325 J Street Room 1350, Sacramento, California 95814-2922.

2. The contents of the notification shall include the following:

- a. Completed SERP Project Notification Form.
- b. A description of how each site would comply with the conditions of this RGP.
- c. A vicinity map, plan-view and cross-section drawings clearly depicting the location, size and dimensions of each proposed activity, as well as the location of the ordinary high water mark (OHWM) of non-tidal waters, or the high tide line (HTL) and mean high water mark (MHWM) of tidal waters. The drawings shall contain a title block, legend and scale, nearby structures, parcel boundaries, and dimensions of the proposed fill. All drawings shall comply with the Final Map and Drawing Standards for the South Pacific Division Regulatory Program, which can be found at <http://www.spd.usace.army.mil/Portals/13/docs/regulatory/standards/map.pdf>.

d. A delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, within the proposed project area. The delineation shall show the location of the OHWM of non-tidal waters or the HTL and MHWM of tidal waters, shall be completed using the currently approved Corps delineation manual, and shall meet the Sacramento Districts *Minimum Standards For Acceptance of Preliminary Wetland Delineations*, dated November 30, 2001.

e. Biological information sufficient to demonstrate compliance with the Fish and Wildlife Service Biological Opinion (Number 08ESMF00-2013-F-0450, dated September 24, 2013) and the National Marine Fisheries Service Biological Opinion (Number 2013/9493, dated October 29, 2013) and the technical assistance letter (dated January 28, 2014).

f. A description of measures proposed to be taken to avoid and minimize impacts to the aquatic environment, including those to wetlands, Federally-listed threatened and/or endangered species, spawning habitat, and shallow water habitat, to the maximum extent practicable.

g. A description of any historic properties which may be affected by the proposed work, include a vicinity map indicating the location of historic resources, and identifying the potential for the presence of historic resources. If it is determined by this office that the project may affect cultural resources, you may be required to submit a cultural resources report, prepared in accordance with the February 25, 2011, *Guidelines for Compliance with Section 106 of the National Historic Preservation Act* (http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/2011-02-25_Section_106_Guidelines.pdf).

h. Pre-project color photographs of the proposed erosion repair site(s), the shoreline where the repair site(s) would be accessed, and the areas upstream, downstream, and across the channel from of the proposed repair location. The location of the photographs shall be identified on the plan view drawing required in subpart (b) of this condition.

i. Evidence you have applied for and/or received any required permits from the California State Lands Commission (SLC) (<http://www.slc.ca.gov/>). If a permit is not required from SLC evidence must be provided in the SERP PCN.

3. Within 15 days following receipt of the SERP Notification Package, this office will notify you in writing if:

a. The proposed erosion repair projects may qualify for authorization under this RGP.

b. The Notification Package is complete.

c. Consultation under Section 7 of the Endangered Species Act (ESA) and/or Section 106 of the National Historic Preservation Act (NHPA) is required.

If the SERP notification package is not complete, the notification will specifically identify the additional information required to be submitted.

4. Within 15 days following receipt of a complete SERP Notification package, this office will initiate any required consultations under Section 7 of the ESA and/or Section 106 of the NHPA.

5. Within 15 days following completion of required consultations under Section 7 of the ESA and/or Section 106 of the NHPA, or, if consultation is not required, within 45 days following receipt of a complete PCN, this office will notify you via letter if the project is authorized under and subject to the terms and conditions of this RGP.

6. No work may proceed under the authority of this RGP until you have been notified, in writing, by this office that the activity is authorized.

7. This office may add special conditions to verifications under this RGP to ensure the authorized activity has minimal impacts, both individually and cumulatively, on the aquatic environment. Such conditions may include those required for compliance with Section 7 of the ESA and Section 106 of the NHPA.

PERMIT CONDITIONS:

1. This RGP will expire on **May 6, 2019**. Activities which have commenced (i.e. are under construction) or are under contract to commence in reliance upon this RGP will remain authorized provided the activity is completed within twelve months of the date of the RGPs expiration.

2. Section 401 Water Quality Certification is required for activities to be authorized by this RGP. The Corps may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal impacts, individually or cumulatively.

3. This Corps permit does not authorize you to take an endangered species, in particular the federally-threatened: delta smelt (*Hypomesus transpacificus*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), giant garter snake (*Thamnophis gigas*), Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), Central Valley steelhead (*O. mykiss*), and North American green sturgeon (*Acipenser medirostris*); or the endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), or any associated designated critical habitat for these species. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Programmatic Biological Opinion Number 08ESMF00-2013-F-0450, dated September 24, 2013) and the National Marine Fisheries Service Biological Opinion (Number 2013/9493, dated October 29, 2013) and the technical assistance letter (dated January 28, 2014), contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinions. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached Biological Opinions, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinions, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The U. S. Fish and Wildlife Service and the National Marine Fisheries Service are the appropriate authority to determine compliance with the terms and conditions of their Biological Opinions, and with the Endangered Species Act. You must comply with all conditions of this/these Biological Opinions, including those ascribed to the Corps.

To ensure your project complies with the Magnuson-Stevens Fishery and Consultation Act, you must implement all of the mitigating measures and Essential Fish Habitat Recommendations identified in the above National Marine Fisheries document, including those ascribed to the Corps therein.

4. No activity is authorized that may affect cultural resources listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

5. If you discover any previously unknown historical or archeological remains during construction of the structure authorized by this permit, you shall immediately cease work and notify this office of what was found. The Corps 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.

6. You shall ensure that the erosion repair does not impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. You shall comply with the in-water and upland work windows identified in Section I, Conservation Measures of the SERP Manual.

8. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area. You shall ensure that the Notification Package contains information on how impacts to aquatic life movements will be avoided and/or minimized.

9. You shall avoid activities in spawning areas during spawning seasons to the maximum extent practicable. For erosion repair sites located within spawning areas, you shall ensure that the Notification Package contains information on how spawning areas will be avoided and/or how impacts to spawning areas will be minimized.

10. You shall avoid breeding areas for migratory birds to the maximum extent practicable. For erosion repair sites located within migratory bird breeding areas, you shall ensure that Notification Package includes information on how breeding areas will be avoided and/or how impacts to migratory bird breeding areas will be minimized.

11. You are responsible for all authorized work and ensuring that all contractors and workers are made aware of and adhere to the terms and conditions of the permit authorization. You shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all construction/installation activities are completed.

12. You shall notify this office of the start date for the authorized work within 10 days prior to beginning work within waters of the U.S. and of the completion date for the authorized work within 30 days following completion of work within waters of the U.S.

13. For all activities resulting in temporary fill within waters of the U.S., you shall:

- a. Utilize material consisting of clean and washed gravel.

b. Place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing ground elevation of the waters temporarily filled during construction; and

c. Remove all temporary fill within 30 days following completion of construction activities, and re-vegetate the temporary fill area with native vegetation, as appropriate.

14. The project limits shall be clearly identified in the field with highly visible markers such as construction fencing or silt barriers prior to initiating construction work to ensure avoidance of impacts beyond permit limits. Such identification shall be properly maintained until construction is completed.

15. You shall use only clean fill material for any activity authorized under this RGP. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction material, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

16. The activities authorized under this RGP must comply with applicable FEMA-approved state or local floodplain management requirements.

17. You shall maintain any activity authorized by this RGP in good condition and in conformance with the terms and conditions of this permit. Should you wish to cease to maintain the authorized activity or should you desire to abandon it, you must obtain a modification of this permit from this office, which may require restoration of the area.

18. You shall allow Corps representatives to inspect the authorized structure and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the RGP verification. You will be notified by this office in advance of an inspection.

19. For activities authorized under Section 10 of the Rivers and Harbors Act:

a. Your construction and use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

b. No activity may cause more than a minimal adverse effect on navigation.

c. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at your expense on authorized facilities in navigable waters of the United States.

d. You understand and agree that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, 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, to remove, relocate, or alter the structural work or obstructions caused hereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration

20. The pre-construction course, condition, capacity, and location of open waters shall be maintained for each activity authorized under this RGP. The activity must not restrict or impede the

passage of normal or high flows, unless the primary purpose of the activity is to manage high flows.

21. You shall submit an annual report to this office covering all activities conducted under this RGP. The report shall be submitted by December 31 of each year and shall include the following information:

a. A complete description of the work within waters of the U.S., including the type and amount (in cubic yards) of material and the area (in acres and linear feet) of dredged and/or fill material discharged into waters of the U.S., at each location.

b. A description of any temporary access, construction and dewatering activities, including the methods for accomplishing dewatering, the area of impacts within waters of the U.S., and the methods for restoring all temporary construction areas.

c. A vicinity map depicting the location of each activity. The map shall be of sufficient detail to clearly identify the exact location and extent of each activity.

d. The cumulative amount of material (in cubic yards) and area (in acres in linear feet) of material discharged into waters of the U.S. for all activities conducted under the RGP.

e. Pre-construction and post-construction plan-view and cross-section view drawings and photographs for each SERP site completed. These drawings shall be to-scale or show the dimensions of the activity. Each photograph point shall be clearly depicted on the plan-view drawing.

22. You shall include a signed Compliance Certification for each site in the required annual report as described in the SERP Manual to the Corps and provide an electronic copy this office within 30 days after completion of the authorized work.

FURTHER INFORMATION:

1. **Congressional Authorities:** You have been authorized to undertake the activity described above pursuant to: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 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 projects.

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 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 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you 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 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. This RGP may be revoked if it is determined that it is contrary to the public interest, provide the procedures of 33 CFR 325.7 are followed.

PERMIT DURATION: This permit is valid for 5 years from issuance and will expire on **May 6, 2019**. The Corps may re-evaluate the terms and conditions of this permit at any time it deems necessary to protect the public interest. This permit may be re-issued, after public notice and documentation of the decision. Activities under this permit must be verified in writing by the Corps. Verifications are valid for 5 years. If work has not been completed prior to expiration of the verification the applicant must request an extension at least 30 days prior to the expiration date.

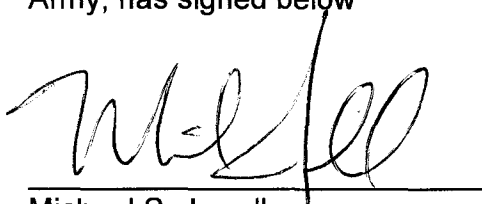
6. Extensions. The permit duration, as described above, establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt

completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the Corps, such as a Nationwide Permit or Letter of Permission. The Corps will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may include additional special conditions to verification under this permit to ensure the activity has minimal impact.

CONTACTS AND ADDITIONAL INFORMATION: Please submit requests for verification under this RGP to: USACE-Sacramento District Regulatory Division, 1325 J Street, Room 1350, Sacramento, California 95814-2922.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below



Michael S. Jewell
Chief, Regulatory Division
Sacramento District
(For the District Engineer)

6 May 2014
Date

ATTACHMENTS:

Attachment A: Small Erosion Repair Manual
Attachment B: USFWS Programmatic Biological Opinion
Attachment C: NMFS Programmatic Biological Opinion