



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

**DEPARTMENT OF THE ARMY PERMIT**

California Department of Water Resources  
Bay-Delta Office  
1416 Ninth Street, Room 215-26  
P.O Box 942836  
Sacramento, California 94236-001  
(Attn: Katherine F. Kelly, Chief Bay-Delta Office)

Permit Number: SPK-1999-00715

Issuing Office: U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 "J" Street  
Sacramento, California 95814-2922

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

You are authorized to perform work in accordance with the terms and conditions specified below. A notice of appeal options is enclosed.

**Project Description:**

To increase water diversions out of Old River into the Clifton Court Forebay (CCF) to cover water supply reductions taken to protect sensitive fisheries. The project is proposing to allow the continued increase of daily maximum allowable daily and three day average diversion rate by 990 acre-feet/day (AF) during July through September. This increase is to recover water supply costs associated with previous reductions in State Water Project (SWP) diversions undertaken to benefit Bay-Delta fishery resources. The applicant has stated this will assist with water quality and storage withdrawal concerns at San Luis reservoir, which is a joint SWP and Central Valley Project (CVP) facility, operated by DWR and the Bureau of Reclamation (Reclamation).

The maximum allowable daily diversion rate into the forebay during the months of July, August and September of calendar years 2013-2016 will be increased from 13,870 acre-feet (AF) to 14,860 AF and the maximum three-day average diversion rate will be increased from 13,250 AF to 14,240 AF (990 AF/day equivalent to 500 cubic feet per second [cfs] per day). This increased diversion over the three-month period shall not

exceed 90,000 AF each year and shall not be greater than the total amount of export reductions to protect fishery resources in the current calendar year as well as any unreimbursed export reductions from the previous year and anticipated export reductions in the subsequent year to protect fishery resources.

**Conditions Governing the Use of Additional Pumping Capacity**

- 1) The increased diversion rate will not result in an increase in annual SWP water supply allocations than would occur in the absence of the increased diversion rate. Water pumped due to the increased capacity will only be used to offset reduced diversions that occurred or will occur because of ESA or other actions taken to benefit fisheries.
- 2) Use of the increased diversion rate will be in accordance with all terms and conditions of existing biological opinions governing SWP operations.
- 3) All three temporary agricultural barriers (Middle River, Old River near Tracy and Grant Line Canal) must be in place and operating when SWP diversions are increased.
- (4) Prior to the start of, or during any time when the SWP has increased its diversion rate between July 1 and September 30, if the combined salvage of listed fish species reaches a level of concern, the Data Assessment Team (DAT) will convene to assess the need to modify the planned increase in SWP diversion rates. If DAT does not concur with the continued use of the increased SWP diversion rate, then the issue will be elevated to the Water Operations Management Team (WOMT). The WOMT will consider the DAT assessment as to whether the use of the SWP increased diversion rate should continue or be suspended. If the WOMT is unable to reach agreement on the operation, the relevant fish regulatory agency will determine whether the 500cfs increased diversion is or continues to be implemented

**Project Location:** The project site is located at Clifton Court Forebay, approximately 6 miles northwest of the City of Tracy, in Section 20, Township 1 South, Range 4 East, Latitude 37.82975 and Longitude 121.55685 in Contra Costa County, California.

**Permit Conditions:**

*General Conditions:*

1. The time limit for completing the work authorized ends on September 30, 2016. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. 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 in compliance with General Condition 4 below. 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.
3. 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.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. 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.
6. 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.

*Special Conditions:*

1. The increased diversion rate will not result in an increase in the annual water supply for the SWP. In addition, water obtained during the increased diversion period can only be used to offset reduced diversions that occurred or will occur because of Endangered Species Act (ESA) or other actions taken to benefit fisheries resources and would not be greater than the amount of reduced diversions to protect fisheries resources during the same calendar year. This increased diversion over the three-month period may not exceed 90,000 AF each year.
2. To insure your project complies with the Federal Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act, you must implement all of the mitigating measures and Essential Fish Habitat Conservation Recommendations identified in the Fish and Wildlife Service Biological Opinion on the

coordinated operation of the Central Valley Project (CVP) and the State Water Project (SWP) (FWS # 81420-2008-F-1481-5) dated December 15, 2008 and the National Marine Fisheries Service BO (NMFS # 2008/09022) dated June 4, 2009 as described in their written concurrences to Reclamation requests (NMFS letter unnumbered dated June 19, 2013 and USFWS number 08FBDT00-2012-TA-0035 dated June 19, 2013). If you are unable to implement any of these measures, you must immediately notify this office, the Fish and Wildlife Service and the National Marine Fisheries Service so we may consult as appropriate, prior to initiating the work, in accordance with Federal law. These diversions shall be terminated if the Regional Director of the U. S. Fish and Wildlife Service or the National Marine Fisheries Service, or the Director of the California Department of Fish and Wildlife, or their authorized representative, notifies the District Engineer that the operation is not consistent with the applicable biological opinion(s) or may adversely affect listed threatened or endangered species.

3. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.
4. Use of the increased diversion rate will be in accordance with all terms and conditions of the existing BOs governing SWP operations.
5. All three temporary agricultural barriers (Middle River, Old River near Tracy and Grant Line Canal) shall be in place and operating when SWP diversions are increased.
6. Between July 1, and September 30, prior to the start of or during any time at which the SWP has increased diversion rate in accordance with the approved operations plan, if the combined salvage of listed fish species reaches a level of concern, real-time decision making will be implemented. The relevant fish regulatory agency will determine if the 500 cfs increased diversion is halted or continues to be implemented.
7. The work must meet the Export/Inflow ratios and other requirements of the California State Water Resources Control Board's Decision 1641.

**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. 403).

( ) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

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:

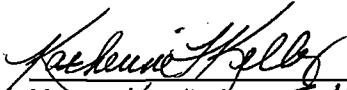
- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

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.

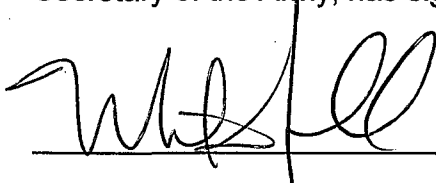
6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable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

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

  
Name KATHERINE F. KELLY  
Title DAY-DELTA OFFICE CHIEF  
Permittee

08/15/13  
Date

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



15 Aug 13  
Date

(For the District Engineer)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Transferee

\_\_\_\_\_ Date