



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

408 Permission Section

**PUBLIC NOTICE**

**REQUEST FOR PERMISSION TO ALTER A U.S. ARMY CORPS OF ENGINEERS PROJECT  
UNDER SECTION 408**

**TITLE:** Reclamation District (RD) 2091 Seepage and Stability Berms.

**PUBLIC NOTICE COMMENT PERIOD:**

Begins: January 8, 2019

Ends: February 7, 2019

**REQUESTER:** In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the RD 2091 (requester) has requested permission through the Central Valley Flood Protection Board (non-federal sponsor of the federally authorized project) from the U.S. Army Corps of Engineers (USACE) to alter the Lower San Joaquin River and Tributaries Project, an existing federal flood risk management project, authorized by the Flood Control Act of 1944.

**LOCATION:** The proposed project is located at five individual sites along the San Joaquin River, southwest of the city of Modesto in Stanislaus County, California (Attachments 1 and 2).

**REQUESTER'S PROPOSED ACTION:** The proposed project is to construct seepage and stability berms at five critical levee repair sites along San Joaquin River. These critical repairs are in general accordance with the California Department of Water Resources Rural Levee Repair Guidelines. The following berms would be constructed: Site 1, 1.07 mile long seepage berm located between approximately levee mile (LM) 2.87 and 3.94 (right levee); Site 2, 0.6 mile long seepage berm located between approximate LM 4.5 and 5.1 (right levee); Site 3, 0.05 mile long combined seepage and stability berm located between approximate LM 5.7 and 5.75 (right levee); Site 4, 0.1 mile long combined seepage and stability berm located at approximate LM 6.08 (right levee); Site 5, 0.5 mile long combined seepage and stability berm located between approximate LM 6.38 and 6.88 (right levee). The berms would have a minimum width of four times the levee height and a minimum height of five feet at the levee toe. All of the sites would need to be cleared and grubbed prior to construction, this would include the removal of approximately 25 trees. All construction activities would take place on the landside of the levee, there would be no in-water work. Disturbed areas would be seeded and mulched to prevent erosion following completion of the project.

**ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:** The proposed action is located on the landside of the east levee of the San Joaquin River. Habitat along the repair sections is primarily ruderal and consists largely of weedy plant species. The repair sections are in a rural part of Stanislaus County and abut irrigated cropland. Clearing and grubbing for site preparation would result in vegetation removal, but all disturbed areas would be re-planted following construction. Approximately 25 mature, solitary valley oak (*Quercus lobata*) trees are present in the project area and would need to be removed prior to construction.

The project area could provide habitat for a number of special status plant and animal species (Attachment 3). However, the requester would implement a number of measures to avoid and minimize potential effects to these species. For example, to minimize effects to nesting birds, a

qualified biologist would conduct at least one nesting bird survey a maximum of one week prior to the start of construction activity. If nests are identified, buffer zones would be put into place. Additionally, a qualified biologist would be on site to monitor construction.

As the proposed project would take place on the landside of the levee, only minor effects to water quality are expected. A number of best management practices, including a spill control plan and a storm water pollution prevention plan, would be implemented to minimize any potential effects to water quality.

A cultural resources inventory report will be prepared and USACE will initiated any appropriate consultations with Native American tribes and the State Historic Preservation Officer.

**AUTHORITY:** The authority to grant permission for temporary or permanent use, occupation or alteration of any USACE civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 ("Section 408"). Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary of Army's authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE, Directorate of Civil Works and Division and District Engineers, depending upon the nature of the activity.

**LIMITS OF SECTION 408 AUTHORITY:** A requester has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or regulations, including any required permits from the USACE Regulatory Program under 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. Section 1344), and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413). In addition, an approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

**EVALUATION FACTORS:** The decision whether to grant the requested permission for project alteration under Section 408 will be based on several factors. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Review of requests for alteration will be reviewed by a USACE technical review team considering the following factors:

1) Impair the Usefulness of the Project Determination. The review team will determine if the proposed alteration would limit the ability of the USACE project to function as authorized, or would compromise or change any authorized project conditions, purposes or outputs. In order for an alteration to be approved, the requester must demonstrate that the alteration does not impair the usefulness of the federally authorized project.

2) Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest evaluation depend upon the type of USACE project being altered and the nature of the proposed alteration and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. The benefits that reasonably may be expected to accrue from the proposal must be

compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks and by the net impact of the alteration on the public interest using the public interest factors.

3) Environmental Compliance. A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. While USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the district identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and procedures. NEPA and other analysis completed to comply with other environmental statutes (e.g. Endangered Species Act) should be commensurate with the scale and potential effects of the activity that would alter the USACE project. The district will work with the requester to determine the requirements, which will be scaled to the likely impacts of the proposed alteration and should convey the relevant considerations and impacts in a concise and effective manner.

**PUBLIC INVOLVEMENT:** The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the RD 2091 Seepage and Stability Berms project, a proposed alteration to an existing federally authorized project. Comments received within 30 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources and in the evaluation of whether the proposed alteration would be injurious to the public interest and/or would impair the usefulness of the authorized project. Only the specific activities that have the potential to occupy, use or alter the Lower San Joaquin River and Tributaries Project will be evaluated. Please limit comments to the area of the alteration and those adjacent areas that would be directly or indirectly affected by the alteration to the Lower San Joaquin River and Tributaries Project.

**SUBMITTING COMMENTS:** Written comments, referencing Identification Number 19330 must be submitted to the office listed below on or before February 2, 2019.

Kaleigh Maze, Biologist  
US Army Corps of Engineers, Sacramento District  
1325 J Street, Room 1460  
Sacramento, California 95814-2922

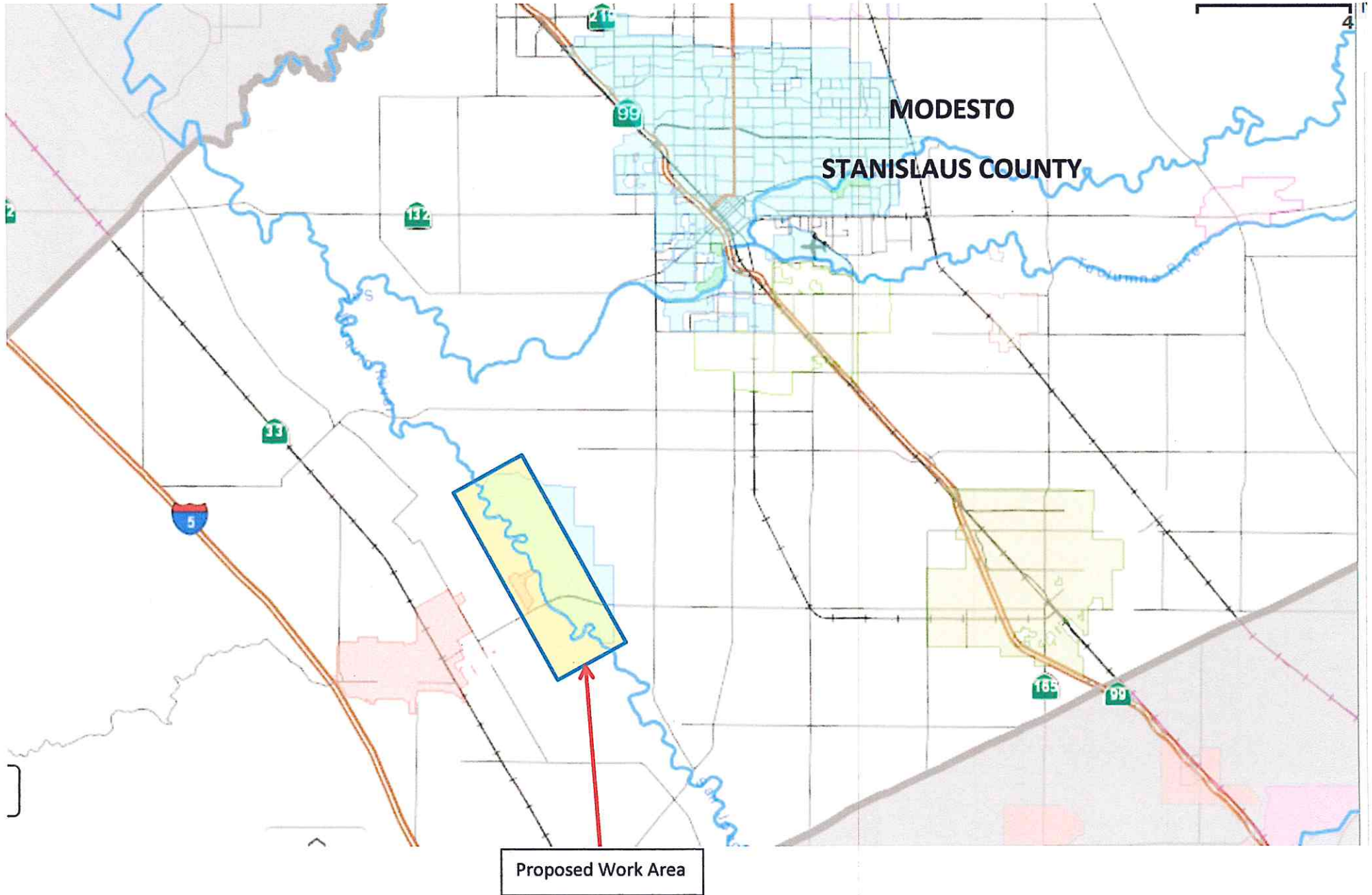
Email: [Kaleigh.Maze@usace.army.mil](mailto:Kaleigh.Maze@usace.army.mil)

Attachments:

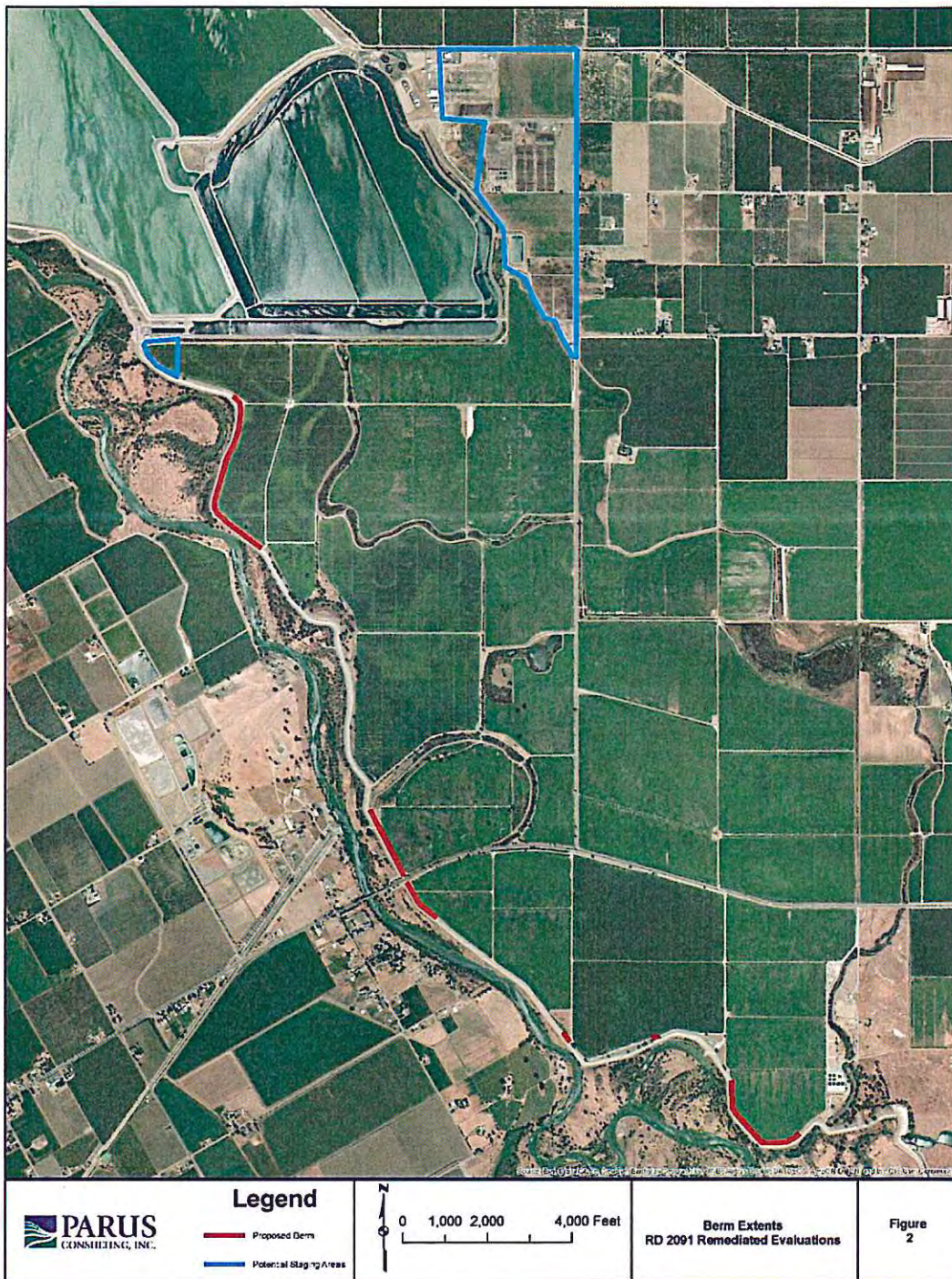
- 1) Vicinity map
- 2) Site maps
- 3) Special status species list

**Attachment 1 – Vicinity Map**

# PROJECT LOCATION



## Attachment 2 – Site Maps



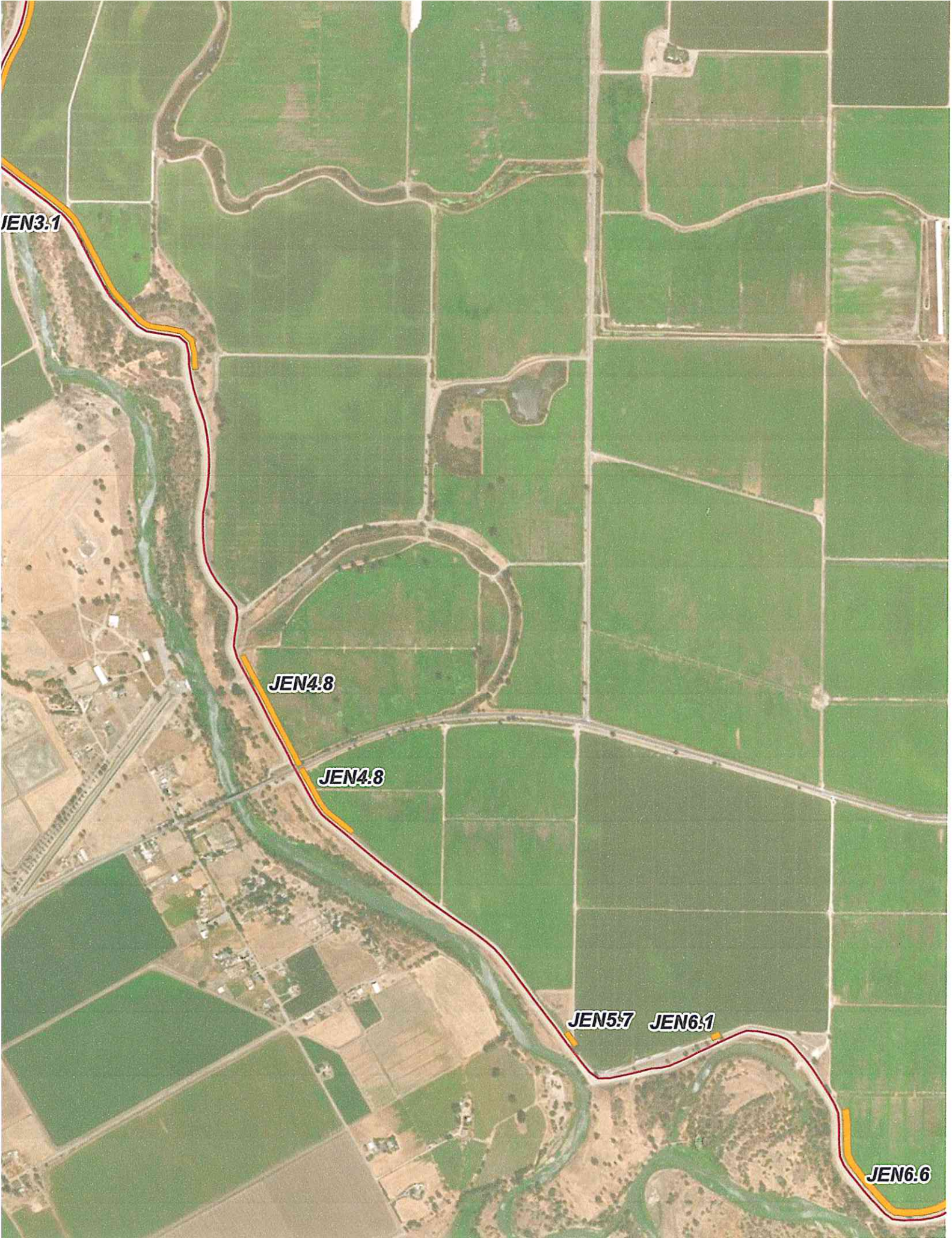
**JEN3:1**

**JEN4:8**

**JEN4:8**

**JEN5:7 JEN6:1**

**JEN6:6**







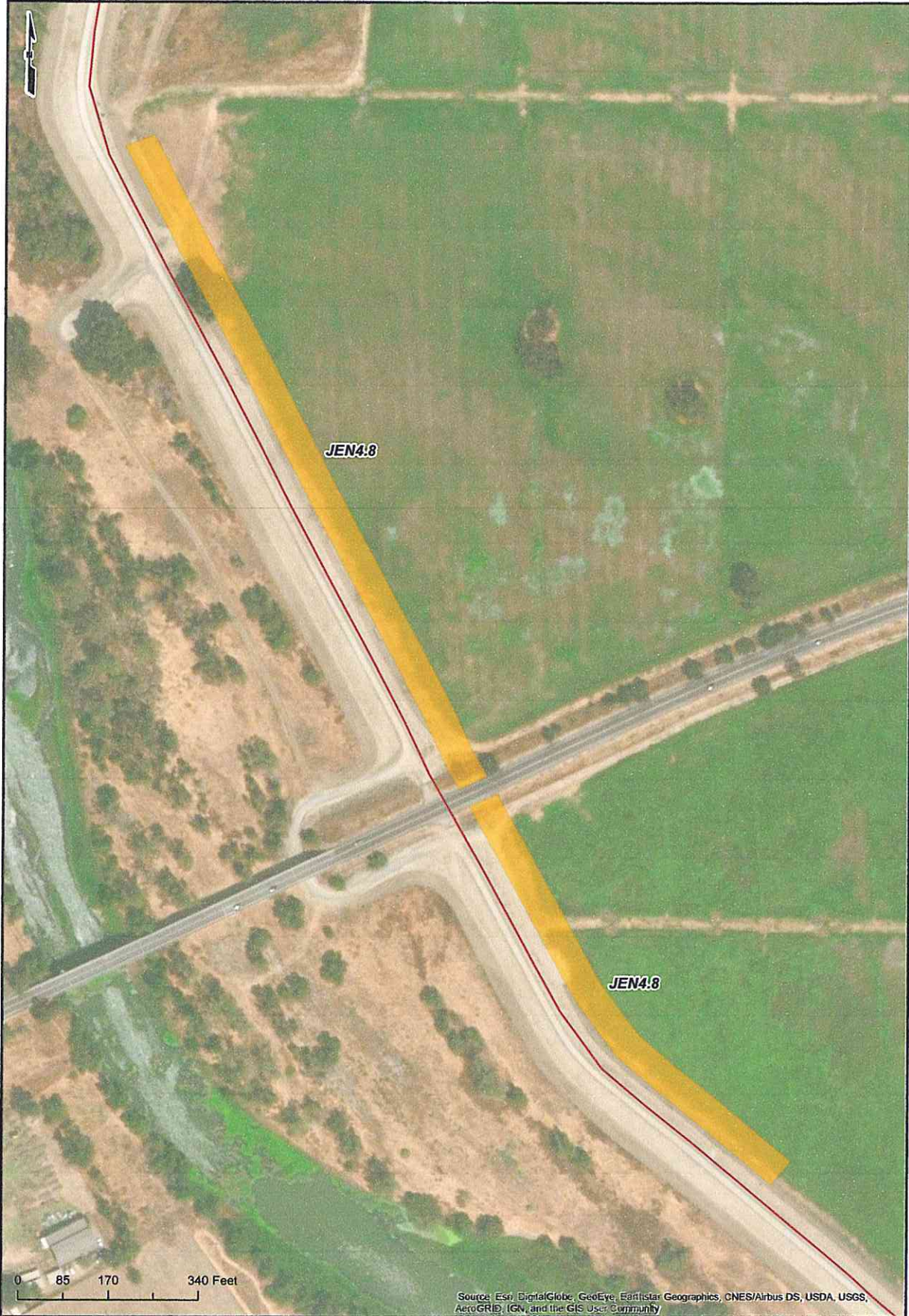
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus/DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



**Legend**  
— Levee Centerline  
■ Proposed Berm

**Berm JEN3.1  
Segment 199  
Berm Extents  
RD 2091 Remediation Evaluations**

**Figure  
2**



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community




**Legend**  
— Levee Centerline  
■ Proposed Berm

**Berm JEN4.8  
Segment 199  
Berm Extents  
RD 2091 Remediation Evaluations**

**Figure  
3**



|   |   |  |                            |
|---|---|--|----------------------------|
|  <p><b>KLEINFELDER</b><br/>Bright People. Right Solutions.</p> | <p><b>Legend</b></p> <ul style="list-style-type: none"><li>— Levee Centerline</li><li>■ Proposed Berm</li></ul> | <p><b>Berm JEN5.7<br/>Segment 199<br/>Berm Extents<br/>RD 2091 Remediation Evaluations</b></p> | <p><b>Figure<br/>4</b></p> |
|---|---|--|----------------------------|



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

|   |   |  |                            |
|---|---|--|----------------------------|
|  <p><b>KLEINFELDER</b><br/>Bright People. Right Solutions.</p> | <p><b>Legend</b></p> <ul style="list-style-type: none"><li>— Levee Centerline</li><li>■ Proposed Berm</li></ul> | <p><b>Berm JEN6.1<br/>Segment 199<br/>Berm Extents<br/>RD 2091 Remediation Evaluations</b></p> | <p><b>Figure<br/>5</b></p> |
|---|---|--|----------------------------|



**Legend**  
— Levee Centerline  
— Proposed Berm

Berm JEN6.6  
Segment 199  
Berm Extents  
RD 2091 Remediation Evaluations

Figure  
6

**Attachment 3 – Special Status Species List**

**Table 2: Special Status Plants with Potential to Occur**

| <b>Common name</b>      | <b>Scientific Name</b>                   | <b>Status</b> | <b>Habitat</b>   | <b>Bloom Period</b> |
|-------------------------|--|---------------|--|---------------------|
| Alkali Milk-vetch       | <i>Astragalus tener var. tener</i>       | CNPS 1B.2     | valley Grasslands, Alkali Sinks, Freshwater Wetlands, wetland-riparian | March-June          |
| California Alkali Grass | <i>Puccinellia simplex</i>               | CNPS 1B.2     | Valley grassland, wetland-riparian                                     | March-May           |
| Delta Button-celery     | <i>Eryngium racemosum</i>                | CE, CNPS 1B.1 | Freshwater wetlands, wetland-riparian                                  | June- October       |
| Heartscale              | <i>Atriplex cordulata var. cordulata</i> | CNPS 1B.2     | Shadscale Scrub, Valley Grassland, wetland-riparian                    | April-October       |
| Lesser Saltscale        | <i>Atriplex minuscula</i>                | CNPS 1B.1     | Shadscale Scrub, Valley Grassland, Alkali Sink                         | May-October         |
| Vernal Pool Smallscale  | <i>Atriplex persistens</i>               | CNPS 1B.2     | Occurs usually in wetlands, occasionally in non-wetlands               | June- October       |

CE California Listed as Endangered

CNPS (California Native Plant Society rarity rank.



**Table 3: Special Status Wildlife with Potential to Occur**

| Common name                       | Scientific Name                          | Status      | Habitat  |
|-----------------------------------|--|-------------|--|
| Fish                              |  |             |  |
| Sacramento Splittail              | <i>Pogonichthys macrolepidotus</i>       | CDFW<br>SSC | Rivers and streams with cold water and gravel bottoms appropriate for spawning |
| Steelhead                         | <i>Oncorhynchus mykiss irideus</i>       | FT          | Rivers and streams with cold water and gravel bottoms appropriate for spawning |
| Reptiles                          |  |             |  |
| Western Pond turtle               | <i>Actinemys marmorata ssp.</i>          | CDFW<br>SSC | ponds, lakes, rivers, streams, creeks, marshes, and irrigation ditches         |
| Giant Garter Snake                | <i>Thamnophis gigas</i>                  | FT, CT      | marshes, sloughs, drainage canals, and irrigation ditches                      |
| Invertebrates                     |  |             |  |
| Valley Elderberry Longhorn Beetle | <i>Desmocerus californicus dimorphus</i> | FT          | Elderberry along rivers and streams  |
| Birds                             |  |             |  |
| Osprey                            | <i>Pandion haliaetus</i>                 | CDFW<br>WL  | Waterways  |
| Double-crested Cormorant          | <i>Phalacrocorax auritus</i>             | CDFW<br>WL  | Waterways  |
| Western Yellow-billed Cuckoo      | <i>Coccyzus americanus occidentalis</i>  | FT, CE      | Riparian Woodlands   |
| Yellow Warbler                    | <i>Dendroica petechia ssp.</i>           | CDFW<br>SSC | Wetlands   |
| Yellow-breasted Chat              | <i>Icteria virens</i>                    | CDFW<br>SCC | Shrubby habitats along rivers  |





| Common name          | Scientific Name           | Status      | Habitat   |
|----------------------|---------------------------|-------------|---|
| White-tailed Kite    | <i>Elanus leucurus</i>    | CDFW<br>FP  | Riparian woodlands, agricultural lands                                      |
| Northern Harrier     | <i>Circus cyaneus</i>     | CDFW<br>SSC | Wetlands, grasslands, and agricultural lands                                |
| Cooper's hawk        | <i>Accipiter cooperii</i> | CDFW<br>WL  | Riparian Woodlands  |
| Swainson's Hawk      | <i>Buteo swainsoni</i>    | CT          | Grasslands and agricultural lands   |
| Burrowing owl        | <i>Athene cunicularia</i> | CDFW<br>SSC | Grasslands, agricultural land, and road embankments                         |
| Bank Swallow         | <i>Riparia riparia</i>    | CT          | Low areas along rivers, streams   |
| Tricolored Blackbird | <i>Agelaius tricolor</i>  | CDFW<br>SSC | Riparian and upland shrubland, and grass and marshland, Agricultural fields |

FT= Federally Threatened

CT= California Threatened

CE= California Endangered

CDFW SCC= Species of special concern

CDFW WL= Watch List

CDFW FP=Fully Protected



**Table 4: Wildlife Observed Within Project Area**

| Common Name            | Scientific Name                | Mean of Detection |
|------------------------|--------------------------------|-------------------|
| Amphibians             |                                |                   |
| Sierran Treefrog       | <i>Pseudacris sierra</i>       | Aurally           |
| Reptiles               |                                |                   |
| Western Fence Lizard   | <i>Sceloporus occidentalis</i> | Aurally           |
| Birds                  |                                |                   |
| Mallard                | <i>Anas platyrhynchos</i>      | Aurally           |
| Red-shouldered Hawk    | <i>Buteo lineatus</i>          | Aurally           |
| Red-tailed Hawk        | <i>Buteo jamaicensis</i>       | Aurally           |
| Mourning Dove          | <i>Zenaida macroura</i>        | Aurally           |
| Eurasian Collared-dove | <i>Streptopelia decaocto</i>   | Aurally           |
| Northern Flicker       | <i>Colaptes auritus</i>        | Aurally           |
| Nuttall's Woodpecker   | <i>Picoides nuttallii</i>      | Aurally           |
| Black Phoebe           | <i>Sayornis nigricans</i>      | Aurally           |
| American Crow          | <i>Corvus brachyrhynchos</i>   | Aurally           |
| California Scrub-jay   | <i>Aphelocoma californica</i>  | Aurally           |
| Bushtit                | <i>Psaltriparus minimus</i>    | Aurally           |
| Oak Titmouse           | <i>Baeolophus inornatus</i>    | Aurally           |
| Northern Mockingbird   | <i>Mimus polyglottos</i>       | Aurally           |
| California Towhee      | <i>Pipilo crissalis</i>        | Aurally           |
| Song Sparrow           | <i>Melospiza melodia</i>       | Aurally           |
| Common Yellowthroat    | <i>Geothlypis trichas</i>      | Aurally           |
| Western Meadowlark     | <i>Sturnella neglecta</i>      | Aurally           |



| Common Name                | Scientific Name                 | Mean of Detection |
|----------------------------|---------------------------------|-------------------|
| Brewer's Blackbird         | <i>Euphagus cyanocephalus</i>   | Aurally           |
| Red-winged Blackbird       | <i>Agelaius phoeniceus</i>      | Aurally           |
| Mammals                    |                                 |                   |
| California ground squirrel | <i>Otospermophilus beecheyi</i> | Visual detection  |
| Pocket Gopher              | <i>Thomomys bottae</i>          | Burrow openings   |
| Desert Cottontail          | <i>Sylvilagus audubonii</i>     | Visual detection  |
| Raccoon                    | <i>Procyon lotor</i>            | Tracks            |
| Mule Deer                  | <i>Odocoileus hemionus</i>      | Tracks            |

