



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: Nielsen Drain Culvert Fish Screen (19469)

PUBLIC NOTICE COMMENT PERIOD:

Begins: December 2, 2020

Ends: December 31, 2020

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the Turlock Irrigation District (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 Flood Control Act of 1944.

LOCATION: San Joaquin River, Merced County, California (Attachment 1 & Attachment 2).

REQUESTER'S PROPOSED ACTION: To construct an approximately 10-foot by 33-foot by 10-foot fish barrier structure with an elevated walkway and railing on the right (east) bank of the San Joaquin River. The barrier will include a slide gate and a swinging mesh screen over an adjustable long crested weir of removable boards, which swings outwards to allow debris to pass. A temporary earthen cofferdam will be utilized during construction (Attachment 3).

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The proposed project would be constructed within the vicinity of a band of willows, cottonwoods, and ruderal vegetation. The Nielsen Drain is primarily used to convey agricultural runoff to the San Joaquin River that lies directly adjacent. The project area has the potential to support listed fish species, including: the federally-listed as threatened Central Valley spring-run (CVSR) Chinook salmon evolutionarily significant unit (ESU) (*Oncorhynchus tshawytscha*) and threatened California Central Valley (CCV) steelhead distinct population segment (DPS) (*O. mykiss*). The National Marine Fisheries Service (NMFS) has issued a Biological Opinion (WCRO-2019-03737) on June 10, 2020, and concluded that the proposed project is not likely to jeopardize the continued existence of the federally listed fish species and is not likely to destroy or adversely modify designated CCV steelhead critical habitat.

The project area does not have the potential to support federally-listed species under the jurisdiction of the United States Fish and Wildlife Service (USFWS). Therefore, USACE

determined there would be no effects on federally listed species or designated critical habitat under the jurisdiction of the USFWS.

The USACE has completed Section 106 consultation under the National Historic Preservation Act with the State Historic Preservation Office and appropriate Native American Tribes. The USACE could have future consultation responsibilities under certain circumstances, such as unanticipated discovery.

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 Sacramento 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 Sacramento 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 Nielsen Drain Culvert Fish Screen, 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 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 and Tributaries Project. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act.

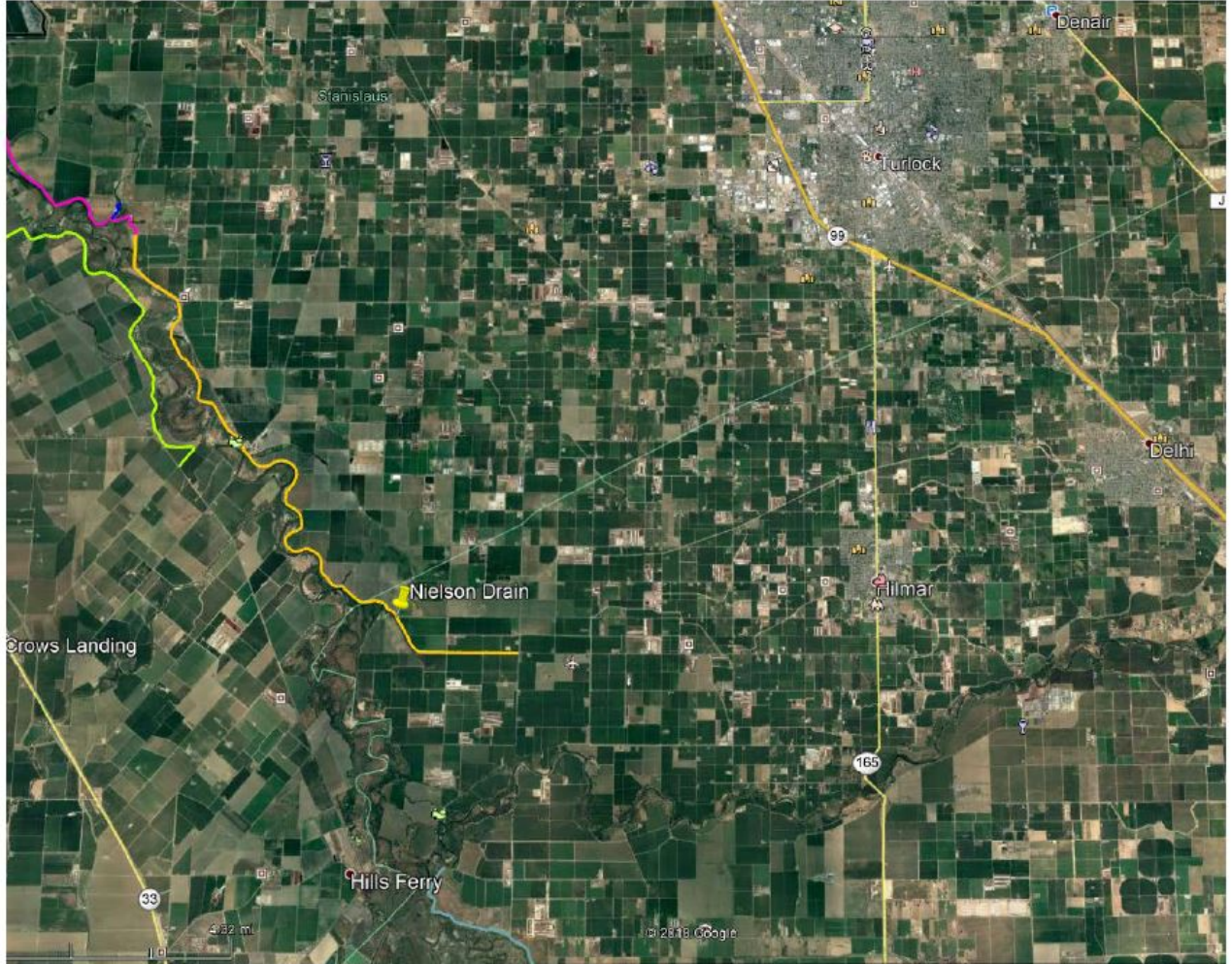
SUBMITTING COMMENTS: Written comments, referencing Identification Number 19469 must be submitted to the office listed below on or before December 31, 2020.

Oren M. Ruffcorn, Biologist
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1460
Sacramento, California 95814-2922

Email: *CESPK-408-PN@usace.army.mil*

Attachments:

Project Vicinity Map



1) Vicinity map

Project Location Map



2) Location map



3) Project footprint map