



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: DWR Delta Conveyance Borings (WA2021088)

PUBLIC NOTICE COMMENT PERIOD:

Begins: August 10, 2021

Ends: September 09, 2021

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the California Department of Water Resources (DWR) (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 Sacramento River Flood Control Project, an existing federal flood risk management project, authorized by the Flood Control Act of 1917.

LOCATION: Sacramento River, Sacramento & Yolo County, CA (Attachment 1).

REQUESTER'S PROPOSED ACTION: To perform 45 soil investigations for California Delta Conveyance Project, including 21 overwater borings, 22 borings within the levee crest, one boring at the levee toe berm, and one CPT on the waterside project levee flat. The maximum depth of penetration for the proposed soil investigations is approximately 200 feet (Attachment 2).

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The proposed soil investigations would take place throughout the Delta. The over water borings would be conducted from a barge or ship within the Sacramento River. Reconnaissance surveys of the proposed action areas will be performed prior to conducting the borings. The terrestrial borings would occur within the upland portions of the Sacramento River Flood Control Project levees.

The USACE determined that the proposed project may affect, but is not likely to adversely affect the federally listed as threatened giant garter snake (*Thamnophis gigas*), the threatened California tiger salamander (*Ambystoma californiense*), the threatened California red-legged frog (*Rana draytonii*), the endangered San Joaquin Kit Fox (*Vulpes macrotis mutica*), and the endangered Delta smelt (*Hypomesus transpacificus*). The USFWS concurred with the USACE determination that the proposed project may affect, but is not likely to adversely affect the aforementioned species.

The USACE has determined that the proposed project may affect, but is not likely to adversely affect the federally listed as threatened California Central Valley (CCV) distinct population segment (DPS) of steelhead (*Oncorhynchus mykiss*), the threatened Central Valley (CV) spring-run Chinook salmon (*O. tshawytscha*), the endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), and the threatened southern DPS of North American green sturgeon (*Acipenser medirostris*, sDPS green sturgeon). USACE also determined that the proposed project may affect, but is not likely to adversely affect designated critical habitat for Sacramento River winter-run Chinook salmon, CV spring-run Chinook salmon, CCV steelhead, and sDPS green sturgeon. The NMFS concurred with the USACE determination that the proposed project may affect, but is not likely to adversely affect the aforementioned species and their designated critical habitats.

Cultural resources documentation will be prepared for the proposed project and USACE is in the process of initiating consultation with Native American tribes and the State Historic Preservation Officer pursuant to Section 106 of the National Historic Preservation Act.

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 DWR Delta Conveyance Borings, 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 Sacramento River Flood Control 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 Sacramento River Flood Control 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 WA2021088 must be submitted to the office listed below on or before September 09, 2021.

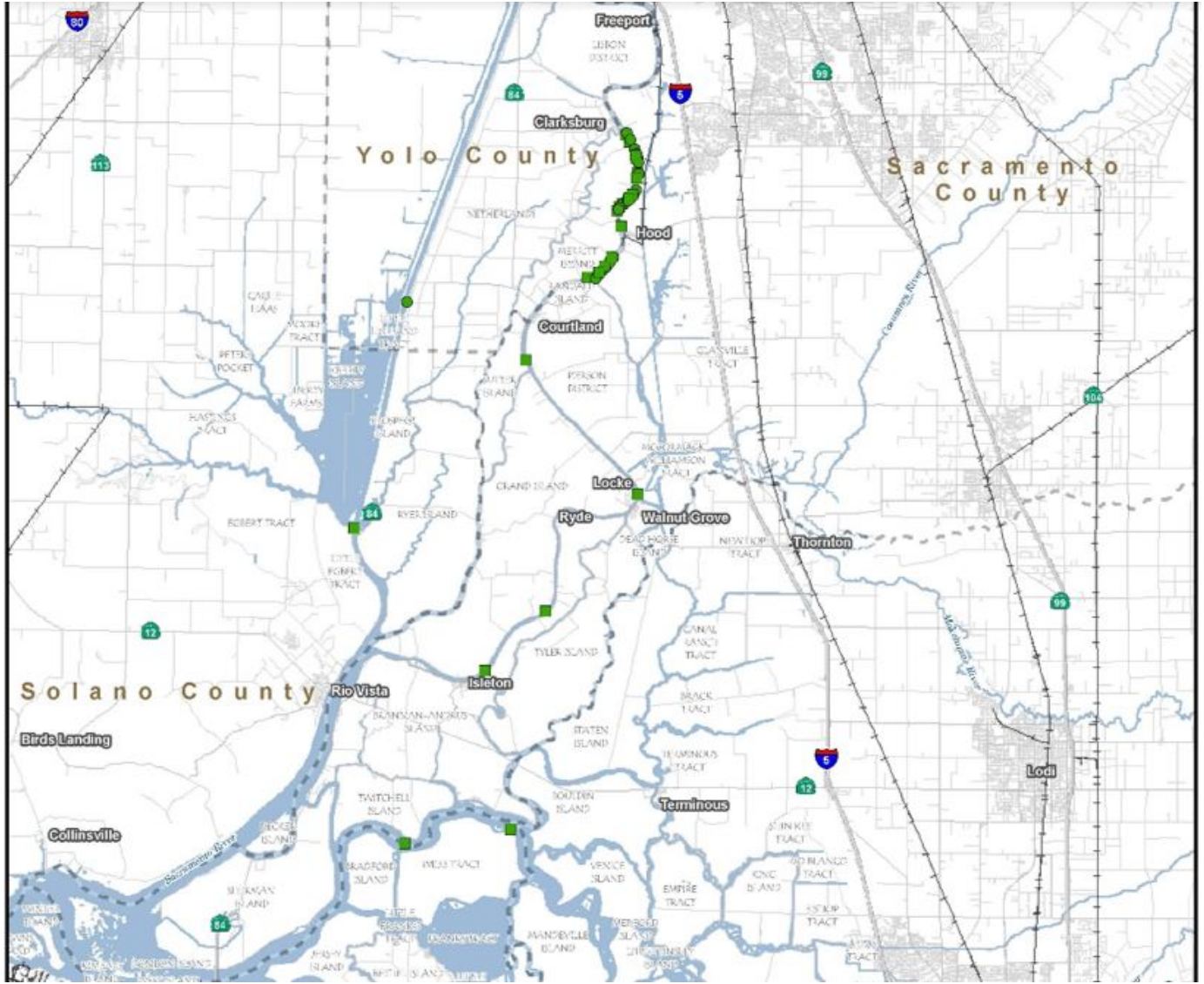
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Attachments:



1) Vicinity map



2) Proposed borings locations map