



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: Merced County Black Rascal Creek Detention Basin (19643)

PUBLIC NOTICE COMMENT PERIOD:

Begins: December 06, 2022

Ends: January 04, 2023

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, Merced County (requester) has requested permission through the Central Valley Flood Protection Board (CVFPB; non-federal sponsor of the federally authorized project) from the U.S. Army Corps of Engineers (USACE) to alter the Merced County Stream Group, an existing federal flood risk management project, authorized by the Flood Control Act of 1917.

LOCATION: Black Rascal Creek, Merced County, CA (Attachments 1 & 2).

REQUESTER'S PROPOSED ACTION: To degrade a portion of the existing Black Rascal – Unit 2 levee, realign the Black Rascal Creek channel, and construct a dam along both the western and southern edges of the project footprint. The proposed levee degradation and dam construction would establish a detention basin capable of periodically impounding over 50 acre-feet of water. A portion of the proposed western dam would be constructed adjacent, and tie-in, to the Black Rascal – Unit 1 levee with the remainder of the western dam proposed to tie-in to the proposed Principal Spillway. The proposed southern dam would perpendicularly cross the Black Rascal – Unit 2 levee and tie-in to the Principal Spillway.

Modifications of the Merced County Stream Group levee systems would also include: the removal and replacement of several culverts, construction of access ramps, removal of an irrigation ditch, relocation of a power line, and construction of a new gate. Primary and auxiliary spillways would be constructed with erosion protection measures at the sites along the southern dam structure. Furthermore, the construction of two tributary channels is proposed for the purposes of additional flood conveyance and riparian habitat (Attachments 3 & 4).

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The proposed project is located within the Black Rascal Creek watershed and contains a portion of Black Rascal Creek approximately 1.3 miles upstream of its confluence with Bear Creek. The Project area consists primarily of farmland, with some non-native grassland and a vernal

pool complex north of the proposed detention basin. Black Rascal Creek flows diagonally through the center of the Project area, flowing northeast to southwest. Agricultural land uses within the proposed detention basin consist primarily of an almond orchard but also include a hay field on the western side of the Project area adjacent to the Fairfield Canal. The majority of wetland habitats are located north of the proposed detention basin and construction footprint, and include emergent, vernal pools/swales, and riverine (Black Rascal Creek) features. The natural vegetation communities that occur in the action area include non-native annual grassland, vernal pools and swales, playa pool, cattail/tule marsh, and cottonwood/willow riparian woodland. The majority of the natural vegetation communities that occur within the action area comprise of non-native annual grassland. USACE has determined there is suitable habitat for federally listed species under jurisdiction of the United States Fish and Wildlife Services (USFWS) in the project area.

Natural Resources Conservation Service (NRCS) has been designated as the lead federal agency responsible for ensuring compliance with Section 7 of the Endangered Species Act (ESA) and Section 662 of the Fish and Wildlife Coordination Act (FWCA). NRCS will complete the necessary consultations under the ESA & FWCA with the USFWS.

Additionally, NRCS, as the lead federal agency, completed consultation with the State Historic Preservation Office and Native American Tribes 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 Merced County Black Rascal Creek Detention Basin, 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 Merced County Stream Group 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 Merced County Stream Group. 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 19643 must be submitted to the office listed below on or before January 04, 2023.

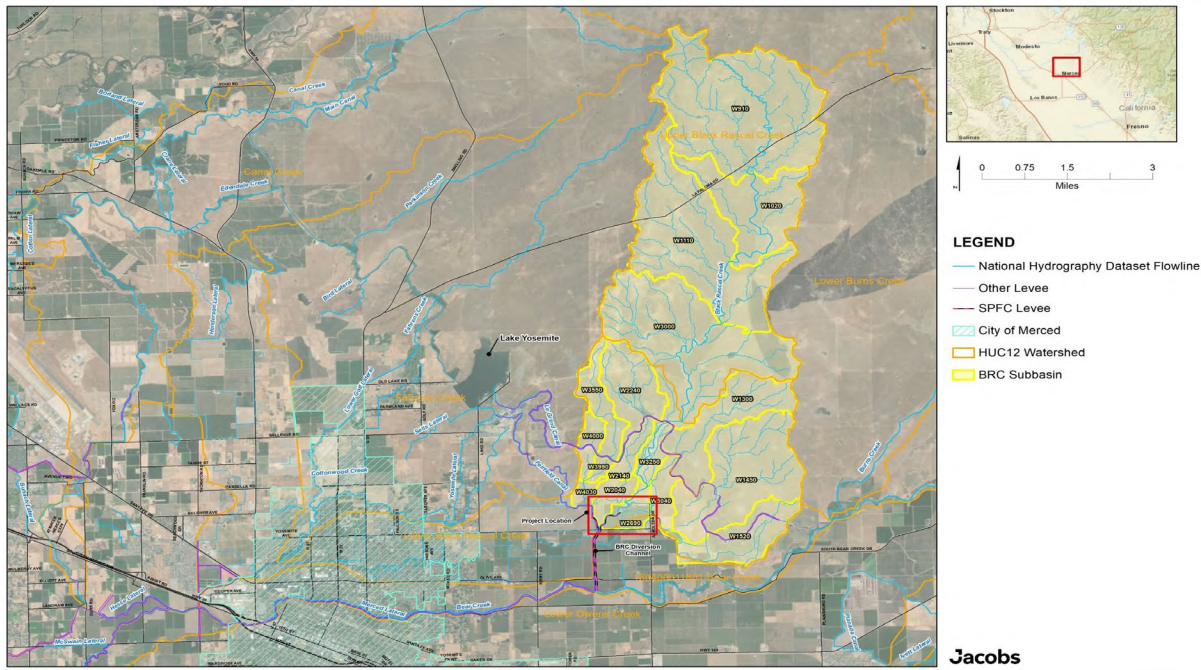
Brian Luke
Natural Resources Specialist
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1460
Sacramento, California 95814-2922

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

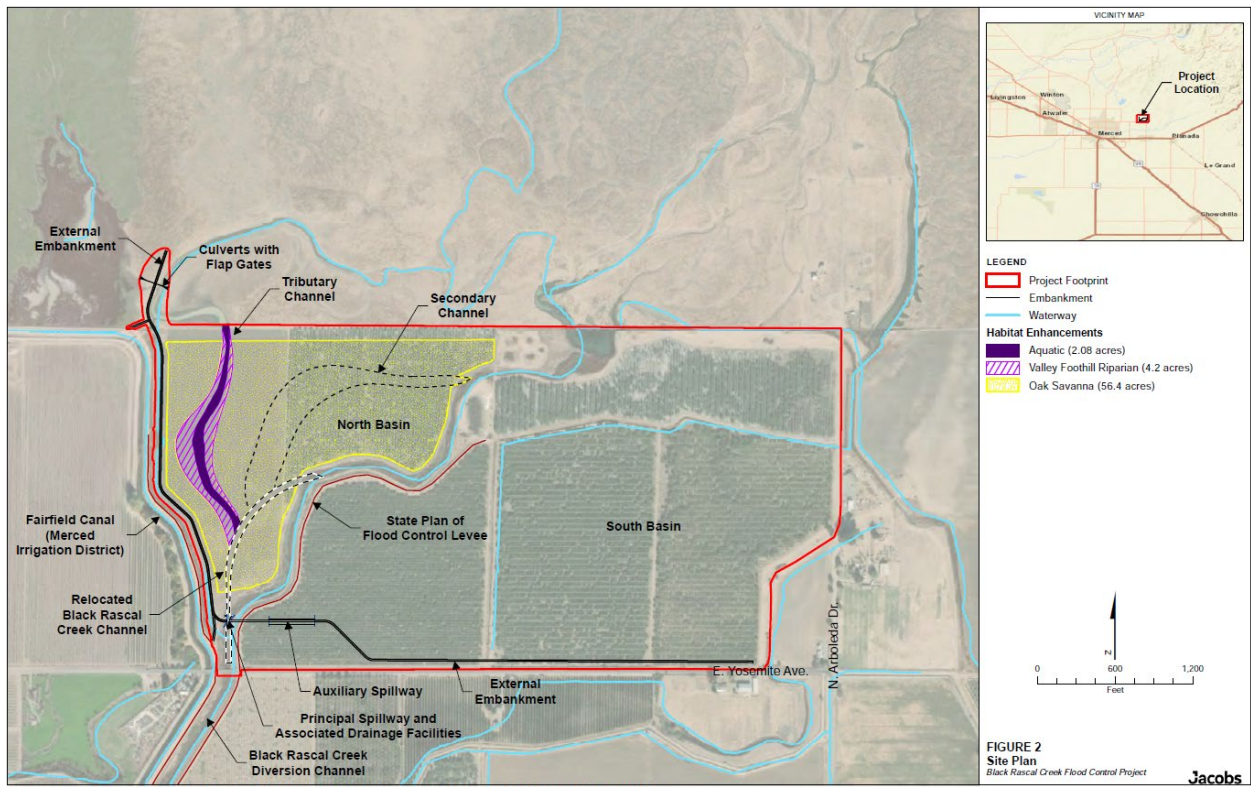
Attachments:



1) General vicinity map



2) Proposed project location map



3) Approximate project footprint map

