



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 PERMISSION FOR AN EXISTING ALTERATION TO A U.S. ARMY  
CORPS OF ENGINEERS PROJECT UNDER SECTION 408**

**TITLE:** Butte Creek Pipe Authorization

**PUBLIC NOTICE COMMENT PERIOD:**

Begins: March 20, 2020

Ends: April 19, 2020

**REQUESTER:** In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, the Durham Mutual Water Company (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 Sacramento River and Major and Minor Tributaries Project, an existing federal flood risk management authorized by the (Public Law No. 534, Seventy-eighth Congress, Second Session, H.R. 4485), approved 22 December 1944.

**LOCATION:** Butte Creek, Butte County, CA. Project is located approximately 0.3 miles west of the Renz Road and Cummings Road intersection and approximately 0.7 miles northeast of Durham, CA. (39.649522, -121.787965) (Attachment 1 & Attachment 2).

**REQUESTER'S PROPOSED ACTION:** Durham Mutual Water Company is requesting authorization of an *existing* 30-inch diameter corrugated metal pipe through the east side of the levee of Butte Creek, and associated appurtenances: a 42-inch diameter corrugated metal riser on the water side, a concrete overflow box on the water side, and a concrete distribution box on the landside levee toe.

**ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:** The proposed action is to grant permission for the existing corrugated metal pipe, corrugated metal riser, concrete overflow box, and concrete distribution box to remain in place. As all work on the alteration has already been completed, USACE does not anticipate that allowing the existing alteration to remain in place would have any adverse effects on environmental resources.

**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 in 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. § 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 under Section 408 whether to grant the requested permission to allow the existing alteration to remain in place will be based on several factors:

- 1) Impair the Usefulness of the Project Determination. A technical 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 existing alteration to be approved, the requester must demonstrate that the existing alteration does not impair the usefulness of the federally authorized project.
- 2) Injurious to the Public Interest Determination. The existing alteration will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. 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 allowing the existing alteration to remain in place must be compared against its reasonably foreseeable detriments. The decision whether to approve the existing 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.

**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 Butte Creek Pipe Authorization, an existing alteration to the Sacramento River Flood Control Project. Comments received within 15 days of publication of this notice will be used in the evaluation of potential impacts of allowing the existing alteration to remain in place on important resources and in the evaluation of whether allowing the existing alteration to remain in place would be injurious to the public interest and/or would impair the usefulness of the authorized project. Please limit

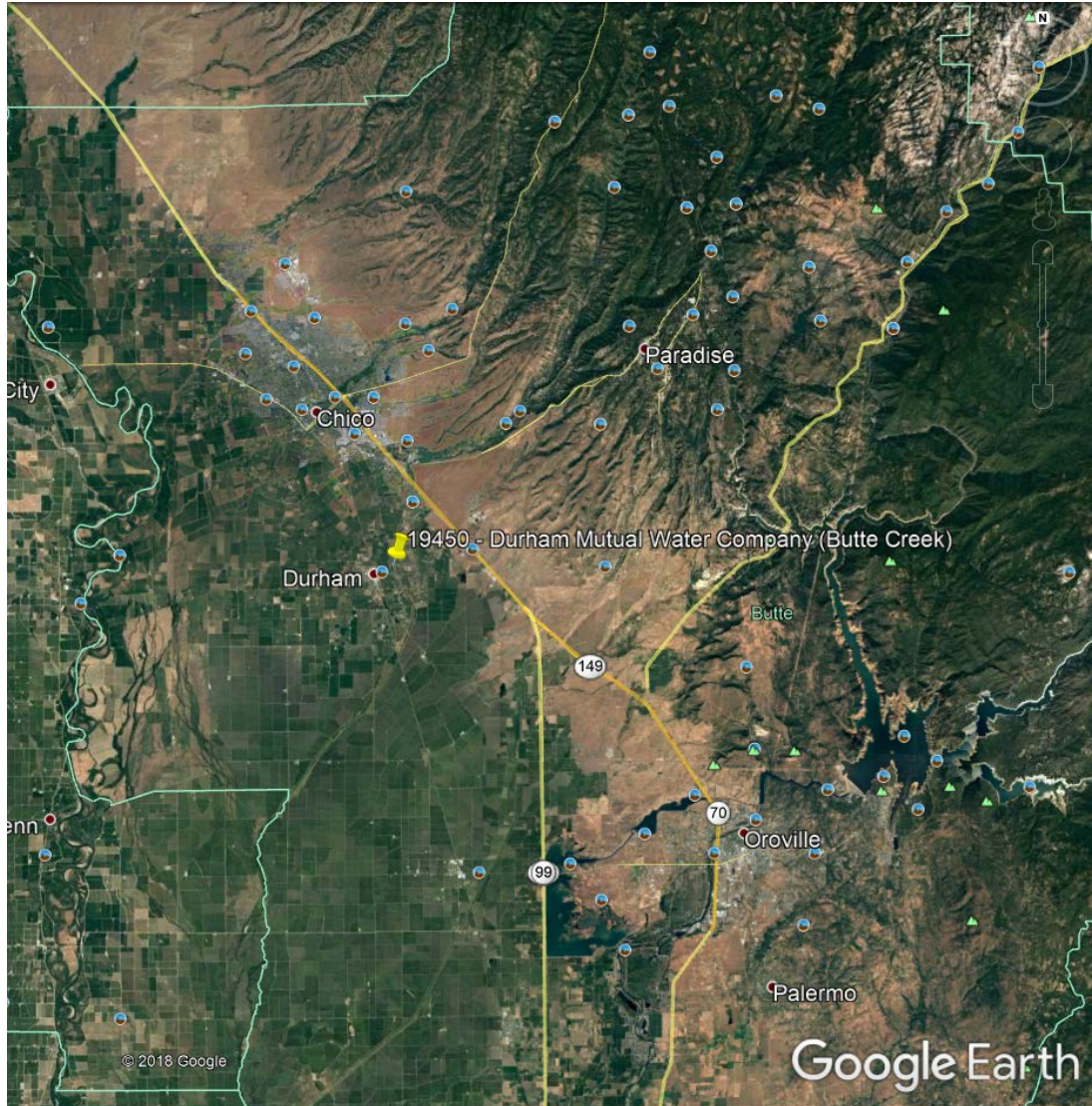
comments to the area of the existing alteration. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act.

**SUBMITTING COMMENTS:** Written comments, referencing Identification Number 19450 must be submitted to the office listed below on or before April 19, 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:



**Attachment 1.** Proposed site vicinity map





**Attachment 2.** Site location map