



**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:** Big Notch Fremont Weir (19523)

**PUBLIC NOTICE COMMENT PERIOD:**

Begins: November 13, 2020

Ends: December 13, 2020

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

**LOCATION:** Yolo Bypass, Yolo County, CA (Attachment 1 & Attachment 2).

**REQUESTER'S PROPOSED ACTION:** The DWR has proposed to construct a gated notch within Fremont Weir to allow increased flow from the Sacramento River to enter the Yolo Bypass. The invert of the notch would be 18 feet below the crest of Fremont Weir and allow a flow of up to 6,000 cubic feet per second through the gated notch to provide open channel flow for adult fish passage, juvenile emigration, and floodplain inundation. The proposed project would also construct an intake channel from the Sacramento River, a headworks structure, a transport channel to the existing Tule Pond, and modifications to the existing Tule Channel and Agricultural Crossing 1. The DWR is currently undergoing conducting a geotechnical investigation to determine if there are impacts to the abject east levee. If there are impacts, DWR has the option to include construction of a slurry cutoff wall to mitigate those impacts (Attachment 3).

**ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:** The proposed Big Notch project would increase access to floodplain rearing habitat and fish passage in the Yolo Bypass and/or the lower Sacramento River. The proposed notch would allow flows up to 6,000 cubic feet per second (cfs) through the notch to provide open channel flow for adult fish passage, juvenile emigration, and floodplain inundation. The construction of the proposed project will result in the direct removal of 11.7 acres (8.7 acres permanent and 3 acres temporary) of emergent marsh, 25 acres (11.3 permanent and 13.7 temporary) of adjacent uplands dominated by annual and perennial graminoids and forbs, and 23.1 acres (16 acres permanent and 7.1 acres temporary) of riparian woody vegetation. Indirect effects will result from type conversion of 30.6 acres of emergent freshwater marsh to uplands due to the permanent draining of Tule Pond and the

freshwater emergent marshes between the design channel south of Tule Pond and the western shoreline and 85 acres of the adjacent active season uplands. The action area, in its entirety (temporary and permanent impacts, with a 500 foot buffer), would encompass approximately 60,000 acres.

The project area has the potential to support threatened and endangered species, including: the giant garter snake (GGS), the western distinct population segment of the yellow-billed cuckoo (cuckoo), the least Bell's vireo, the Colusa grass, the Solano grass, the vernal pool tadpole shrimp, the Conservancy fairy shrimp, the vernal pool fairy shrimp, the delta smelt and designated delta smelt critical habitat, and the valley elderberry longhorn beetle. Construction of the proposed Big Notch project is "likely to adversely affect" GGS, cuckoo, and the least Bell's vireo and is "not likely to adversely affect" the Colusa grass, Solano grass, vernal pool tadpole shrimp, vernal pool fairy shrimp, Conservancy fairy shrimp, and delta smelt. The USFWS has issued a Biological Opinion to BOR (lead federal agency) for the proposed action.

BOR identified five (5) listed anadromous species that utilize the Yolo Bypass, including: the federally listed as endangered, Sacramento River winter-run Chinook salmon evolutionarily significant unit (ESU), the threatened Central Valley spring-run Chinook salmon ESU, the threatened California Central Valley steelhead distinct population segment (DPS), and the threatened southern DPS of the North American green sturgeon. BOR determined that the project is "not likely to jeopardize the continued existence" of the above species, or "destroy or adversely modify any of their designated critical habitats". The National Marine Fisheries Service (NMFS) has issued a Biological Opinion to BOR (lead federal agency) for the proposed action.

The USACE has completed Section 106 consultation under the National Historic Preservation Act via Programmatic Agreement with the State Historic Preservation Office, the Bureau of Reclamation, the California Department of Water Resources, and concurring 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 Big Notch Fremont Weir, 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 19523 must be submitted to the office listed below on or before December 13, 2020.

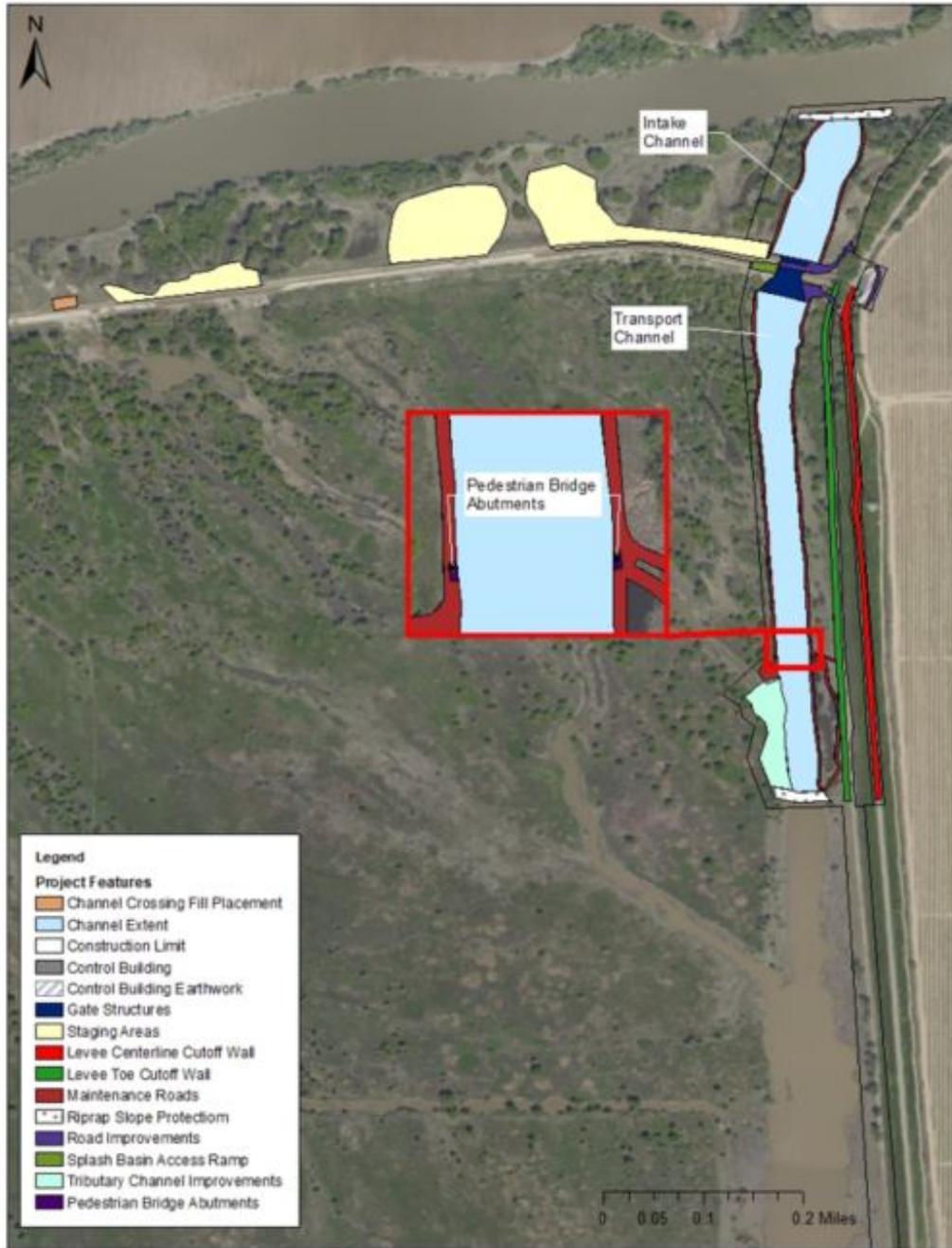
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Attachments:



### Project Location



Headworks, Intake Channel, Transport Channel

2) Location map

### Project Footprint



3) Proposed Footprint map