

**Lower San Joaquin Levee District**  
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**Reggie N. Hill**

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**Darrell Chism**

December 19, 2017

Paul Romero, P.E.  
Flood Management Section  
DWR So. Central Region Office  
3374 E. Shields Avenue  
Fresno, CA 93726

**SUBJECT: East Side Bypass Control Structure Rock Ramp**

Dear Paul:

This letter is being sent on behalf of the Lower San Joaquin Levee District (the "District"). We are in receipt of your Draft Preliminary Design Report (60%) and accompanying plans for the above identified project. As part of the San Joaquin River Restoration Program, the Department of Water Resources (DWR) is proposing modifications to the existing East Side Bypass control structure (EBCS), which is operated and maintained by the Levee District. DWR's proposed modifications to the EBCS would involve removal of the stoplogs at the entrance to the control structure, removal of the energy dissipater blocks downstream of the gates, removal of a 2-foot high concrete sill at the downstream edge of the structure, and construction of a 380-foot long rock ramp downstream of the structure. The purpose for the modifications, as described in the design report, would be to improve fish passage for a variety of species.

The District has serious concerns about the proposed modifications to the EBCS. The structural features that would be removed currently work in conjunction with the gates to control flow through the EBCS. The energy dissipater blocks and concrete sill currently help create a

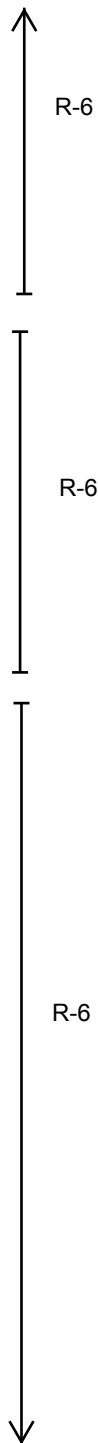
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Paul Romero  
Flood Management Section  
DWR So. Central Region Office

hydraulic jump within the reinforced concrete structure. The District is aware that downstream of the hydraulic jump, velocities are subcritical and much less erosive to the earth channel. However, removal of the energy dissipater blocks and concrete sill would permit supercritical flow at highly erosive velocities to extend beyond the concrete structure under certain conditions. The District does not believe the rock sizes proposed for the rock ramp (1.8-foot maximum diameter) would be stable at these supercritical flows.

The conditions described above would occur when high flows in the East Side Bypass are primarily diverted into the Mariposa Bypass, with some flow passing the EBCS. If the control gates are set to limit the flow and there is a several foot head differential across the structure, velocities downstream of the gates could easily exceed 10 feet per second prior to the hydraulic jump. Without the energy dissipater blocks and the sill, the hydraulic jump may occur beyond the reinforced concrete structure resulting in erosion of the rock ramp and potential damage to the structure from undercutting.

Although DWR's design report for this project (p.24) considers this risk and seems to suggest the structure could be operated during flood flows in such a way as to minimize the risk of the hydraulic jump occurring over the rock ramp, such an approach to the District's operations would be nearly impossible to achieve in practice and would certainly conflict with the operation & maintenance (O&M) manual for the flood control project. The design report correctly states (p. 3) that, historically, the EBCS is not always operated in accordance with the O&M manual. The reasoning for the operational change is due to observations of previous flood events where this adjustment is necessary for the best operation of this structure in conjunction with other flows entering the channel. The O&M does not take this other flow observation into consideration. DWR's proposal to alter the manner in which this structure is operated is detrimental to this project's design purpose, public safety. Also, the proposed rock ramp would prevent the structure from being operated in accordance with the O&M manual without risking damage to the rock ramp and possibly the structure itself. DWR's design report (p. 24) further indicates that further analysis is needed to determine if portions of the rock ramp should be grouted for improved stability. The District does not believe grouted rocks will perform as



Paul Romero  
Flood Management Section  
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reliably as the existing reinforced concrete structure.

The EBCS is operated in conjunction with the Mariposa Control Structure. Any operational change needs to consider this conjunctive operation, as it will affect the MCS flows.

Based on the above noted concerns, the District objects to DWR's proposed modifications to the EBCS and recommends the alternative construction of a dedicated fish ladder for DWR to comply with River Restoration objectives. Please do not hesitate to contact me should you have any questions or request further clarification from the District.

Please note that during the 2017 flood flows through the EBCS, Levee District personnel observed multiple salmon jumping over the downstream concrete sill without difficulty.

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Very truly yours,



Reggie N. Hill, Secretary-Manager

cc: Summers Engineering, Inc.

**LONE TREE MUTUAL WATER COMPANY**

5002 W. El Nido Road  
El Nido, CA 95317  
Telephone (209) 722-3997  
Facsimile (209) 722-0373

Karen Dulik  
California Department of Water Resources  
South Central Region Office  
3374 E. Shields Avenue  
Fresno, CA 93726  
[Karen.Dulik@water.ca.gov](mailto:Karen.Dulik@water.ca.gov)

Becky Victorine  
Bureau of Reclamation  
San Joaquin River Restoration Program  
2800 Cottage Way  
Sacramento, CA 95825  
[rvictorine@usbr.gov](mailto:rvictorine@usbr.gov)

January 15, 2018

Lone Tree Mutual Water Company "LTMWC" is located in the area of discussion for the EA of projects 2.1.1 and 2.1.4 of the Eastside Bypass Improvement Projects. The following comments are meant to address concerns and uncertainties raised in the EA of the two projects referenced.

Project 2.1.1 describes Levee stabilization on the "right" or East bank of the Middle Eastside Bypass. Page 2-2 describes facilities owned and operated by LTMWC consisting of:

- Irrigation canal penetrating the existing levee. This is not identified in the report as belonging to LTMWC, but it is.
- A siphon owned and operated by LTMWC on the landside of the levee moving water from eastside to westside of the bypass depending on conditions.

The concerns are as follows:

The siphon noted would be subject to cracking and excessive leakage if subjected to continued heavy equipment operation, with excavation and upheaval in the general area of it's location and route.

The irrigation canal that penetrates the existing levee is pictured in Fig 2-1. The north bank of the canal is described in the EA as a secondary route for mobilization of the levee stabilization project. The canal bank is used as a maintenance road by LTMWC. It is subject to very light travel. It is constructed out of native soil that was placed above grade when the canal was constructed. The soil type is sandy silty and with minimal clay content. It will not stand up to heavy equipment passage over a period of time and will rut, turn into powder, and blow away in

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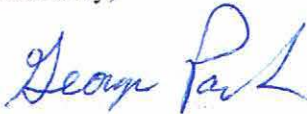
the wind. Utilization of this road would require improvement by the Contractors for the levee stabilization project before it's usage as intended.

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Project 2.4 describes removal of two weirs within the Merced National Wildlife refuge and the drilling of a replacement irrigation well to provide water to 200 acres of ponds in the "Mariposa" unit that currently are serviced with a tractor powered low lift pump utilizing water from other wells on the refuge. Project 2.4 describes drilling an irrigation well of unspecified depth, except to say it would be screened in the shallow aquifer. It further states that the well would utilize a 120 HP electrically powered vertical turbine pump of 1500 gallon per minute capacity at 250-foot total dynamic head. It is LTMWC's experience with wells immediately south of the proposed site, as well as documented on County maps that the shallower unconfined aquifer there only extends to a depth below ground surface of 180 feet, at which point the Corcoran Clay layer is encountered. The Corcoran Clay layer is approximately 60 feet thick at the proposed well site. The confined deep aquifer begins below the Corcoran clay at approximately 240' below ground surface. It is highly unlikely that a well drilled only in the shallow aquifer would yield this volume or need that much horsepower. It is more likely that the volume desired would require drilling thru the Corcoran Clay and penetrating the confined aquifer. The confined aquifer is already stressed and pumping from the same is claimed to be contributing to subsidence in the region.

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Sincerely,

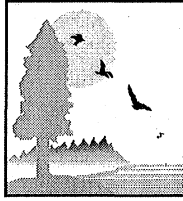


George Park  
Manager  
Lone Tree Mutual Water Company

Cc: John Kinsey of Wanger Jones Helsley PC

**CALIFORNIA STATE LANDS COMMISSION**

100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



*Established in 1938*

JENNIFER LUCCHESI, *Executive Officer*  
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**Contact FAX: (916) 574-1885**

January 19, 2018

File Ref: SCH # 2017121026

Karen Dulik  
California Department of Water Resources  
South Central Region Office  
3374 E. Shields Avenue  
Fresno, CA 93726

Becky Victorine  
Bureau of Reclamation  
San Joaquin River Restoration Program  
2800 Cottage Way  
Sacramento, CA 95825

**Subject: San Joaquin River Restoration Program - Eastside Bypass  
Improvements Project Initial Study/Draft Environmental Assessment  
(IS/DEA) and Proposed Mitigated Negative Declaration, Merced County**

Dear Ms. Dulik and Ms. Victorine:

The California State Lands Commission (Commission) staff appreciates the opportunity to comment on the IS/DEA for the Draft San Joaquin River Restoration Program - Eastside Bypass Improvements Project (Project) along the San Joaquin River and the Eastside Bypass, which was prepared by the U.S. Bureau of Reclamation (Reclamation) and California Department of Water Resources (DWR), Fresno Office. Staff also appreciates Reclamation and DWR staffs taking the time to meet with Commission staff on this matter. Commission staff looks forward to engaging with Reclamation and DWR staff in the future to further discuss this Project and how it will interact with the Commission's jurisdiction. Staff has reviewed the Project IS/DEA and respectfully submits the following comments.

Reclamation and DWR are the federal and state lead agencies under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), respectively, for the Project. The Commission is a trustee agency under CEQA for projects, including the proposed Project, that could directly or indirectly affect sovereign land and accompanying Public Trust resources or uses. (Pub. Resources Code, § 21070.)

**Commission’s Jurisdiction and Public Trust Lands**

The Commission has exclusive jurisdiction and management authority over all ungranted tidelands, submerged lands owned by the State, and the beds of navigable lakes and waterways. (Pub. Resources Code, §§ 6009, 6301.) The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. (Pub. Resources Code, §§ 6009, subd. (c), 6301, and 6306.) All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the ordinary high-water mark, which is often reflected in the mean high tide line, except for areas of fill or artificial accretion, or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, the State holds fee ownership of the bed of the waterway landward to the ordinary low-water mark, and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

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After review of the information contained in the IS/DEA and Commission records, the Project does not appear to include State-owned sovereign land; however, Commission staff’s preliminary investigation into the State’s sovereign interest at the Project location is not conclusive at this time and additional information could reveal that the State possesses some sovereign interest at the Project location. Commission staff requests that as the Project proceeds, Reclamation and DWR contact Randy Collins, Public Land Management Specialist (see contact information below), to ensure that no components of the proposed Project will encroach on State property, triggering the requirement of a lease from the Commission. Further, please note that the historic channel of the San Joaquin River is sovereign state property and the Commission has both the authority and responsibility to protect Public Trust resources and uses therein.

Promotion of public access to and use of California’s navigable waters is promoted in the California Constitution (Art. X, § 4), and a responsibility of the Commission. The State Legislature has stated “that it is essential to the health and well-being of all citizens of this state that public access to public natural resources be increased. It is the intent of the Legislature to increase public access to public natural resources” (Gov. Code, § 66478.3). The Commission is charged with the responsibility of maintaining and increasing public access to Public Trust resources.

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Please also be advised that the San Joaquin River, and potentially the Eastside Bypass, are subject to a public right of navigation. This public right provides that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-

propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses.

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Commission staff requests formal consultation as a trustee agency with DWR to discuss the issues affecting the State’s sovereign land in the bed of the San Joaquin River and how the future use of the Eastside Bypass as a permanent fish channel will affect Public Trust resources. Staff respectfully requests consultation to commence as soon as possible and that copies be forwarded of any comment letters on the Project from the three implementing wildlife agencies, California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and National Marine Fisheries Service.

General Comments

1. In reviewing the Project IS/DEA, Commission staff identified several mitigation measures that appear to defer mitigation, and the analyses made do not appear to accurately or completely mitigate impacts as required by the State CEQA Guidelines. Guidelines section 15126.4, which sets forth requirements for mitigation measures under CEQA, states in part that “formation of mitigation measures should not be deferred until some future time...” (§ 15126.4, subd. (a)(1)(B)). As a trustee agency, the Commission will need to rely on the IS/EA for any discretionary action to consider a lease, should one be required for any Project component.

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2. On page 2-15, in Project Design Considerations, the IS/DEA identifies the need to recalculate the current, compared to the proposed, channel capacity within the Eastside Bypass. The statement that upgrading the standards to U.S. Army Corps of Engineers (USACE) and Central Valley Flood Protection Board (CVFPB) standards indicates that modification to the state and federal plans of flood control may need to be secured, and thus a section 408 (33 USC 408) permit may be needed from the USACE pursuant to section 14 of the Rivers and Harbors Act of 1899. On pages 3-132 and 3-184, the IS/DEA suggests that Reclamation and DWR do not feel the need to apply for a section 408 permit for the Project. Due to a significant importance of the proposed modification of the state and federally adopted plans of flood control for the protection and safety of the levee system within the San Joaquin River levee system should be a high priority. The levee system is important to the protection of the Public Trust resources and sovereign land in the area and Commission staff encourages the lead agencies to consult with the USACE regarding any required section 408 permitting.

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3. Please add the Commission as a trustee agency for the Project. The Commission has the authority and responsibility to oversee the activities that are not on sovereign land but will affect Public Trust resources and uses. For example, pages 3-188 and 3-201 should include the Commission as an agency with jurisdiction over Public Trust resources affected by the Project. These resources include native salmonids as well as public waterways. In addition, Commission staff requests that the Commission be added as a trustee agency to Table 5-1 on pages 5-2 and 5-5.

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4. Page 5-1, section 5.1, states that the Project was separated from the larger Reach 4B/Eastside Bypass Project because it was identified as a near-term element with independent utility that was ripe for project-level environmental analysis. However,

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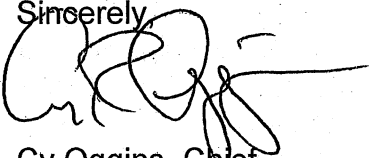
chapter 5.1 also references public scoping meetings and notice documents from the larger Reach 4B/Eastside Bypass Project Environmental Impact Statement/Review (EIS/R), which is yet to be approved or certified. Relying on outreach conducted for the larger Reach 4B/Eastside Bypass Project and documents prepared for that project, raises some concerns with Commission staff that separation of the Eastside Bypass piece from the larger project could be construed as piecemealing. Please note that the lead agencies have responsibility to show independent utility by illustrating the requirements of the proposed Project. Commission staff recommends that Reclamation and DWR bolster the IS/DEA by providing additional clarification on why this Project has independent utility. Commission staff also cautions against relying on previous outreach efforts for the larger project to satisfy requirements for the current Project. Commission staff encourages Reclamation and DWR to engage in additional outreach for this Project to ensure the public is educated and aware that this Project is separate and apart from the larger Reach 4B/Eastside Bypass Project.

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These comments are made without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information come to our attention. In addition, these comments are not intended, nor should they be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

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Thank you for the opportunity to comment on the IS/DEA. Commission staff acknowledges the importance of the San Joaquin River Restoration Project and looks forward to working with DWR and Reclamation moving forward. Should you have any questions concerning the leasing jurisdiction of the Commission, please contact Randy Collins, Public Land Management Specialist, at (916) 575-0900, or via email at [Randy.Collins@slc.ca.gov](mailto:Randy.Collins@slc.ca.gov). Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or via e-mail at [Christopher.Huitt@slc.ca.gov](mailto:Christopher.Huitt@slc.ca.gov). Commission staff requests that DWR (and Reclamation) continue to consult with Commission staff on this Project and keep us advised of changes to the Project description and all other important developments.

Sincerely  
  
 Cy Oggins, Chief  
 Division of Environmental Planning  
 and Management

- cc: Office of Planning and Research
- R. Collins, Commission
- C. Connor, Commission
- P. Griggs, Commission
- J. Garrett, Commission
- E. Gillies, Commission
- C. Huitt, Commission



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

January 16, 2018

Regulatory Division (SPK-2017-00550)

Ms. Karen Dulik  
California Department of Water Resources  
South Central Region Office  
3374 E. Shields Ave.  
Fresno, California 93726

Ms. Becky Victorine  
Bureau of Reclamation  
San Joaquin River Restoration Program  
2800 Cottage Way  
Sacramento, California 95825

Dear Ms. Dulik and Ms. Victorine:

We are responding to your December 2017, request for comments on Initial Study/Draft Environmental Assessment and Proposed Mitigated Negative Declaration for the Eastside Bypass Improvements Project. The project site is as identified in the enclosed map with its location being in the Eastside Bypass in Section 31, Township 9 South, Range 13 East, MDB&M, Latitude 37.15602°, Longitude -120.61917°, Merced County, California.

The Corps of Engineers' jurisdiction within the study area is under the authority of Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the United States. Waters of the United States include, but are not limited to, rivers, perennial or intermittent streams, lakes, ponds, wetlands, vernal pools, marshes, wet meadows, some canals, and seeps. Project features that result in the discharge of dredged or fill material into waters of the United States will require Department of the Army authorization prior to starting work.

To ascertain the extent of waters on the project site, you should prepare a wetland delineation, in accordance with the "Minimum Standards for Acceptance of Preliminary Wetlands Delineations" and "Final Map and Drawing Standards for the South Pacific Division Regulatory Program" under "Jurisdiction" on our website at the address below, and submit it to this office for verification. A list of consultants that prepare wetland delineations and permit application documents is also available on our website at the same location.

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The range of alternatives considered for this project should include alternatives that avoid impacts to wetlands or other waters of the United States. Every effort should be made to avoid project features which require the discharge of dredged or fill material into waters of the United States. In the event it can be clearly demonstrated there are no practicable alternatives to filling waters of the United States, mitigation plans should be developed to compensate for the unavoidable losses resulting from project implementation. A full project description will be necessary for our review including the acreage totals of the proposed impacts to waters of the United States for each project feature. Very little information is presented in this document that quantifies the proposed amount of impacts to waters of the United States for the construction of this project. Therefore, if a permit is needed from the Corps of Engineers for this project we will need more information to fully assess the proposal and how it may impact waters of the United States.

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If waters of the United States are going to be impacted, cultural resource sites within the defined federal permit area, will need to be evaluated according to the standards of the National Environmental Policy Act. All eligible or potentially eligible cultural resource sites in the permit area will be subject to Section 106 of the National Historic Preservation Act, 1966, as amended. The Corps of Engineers must also comply with the terms and conditions of the Federal Endangered Species Act with regards to our permitting process.

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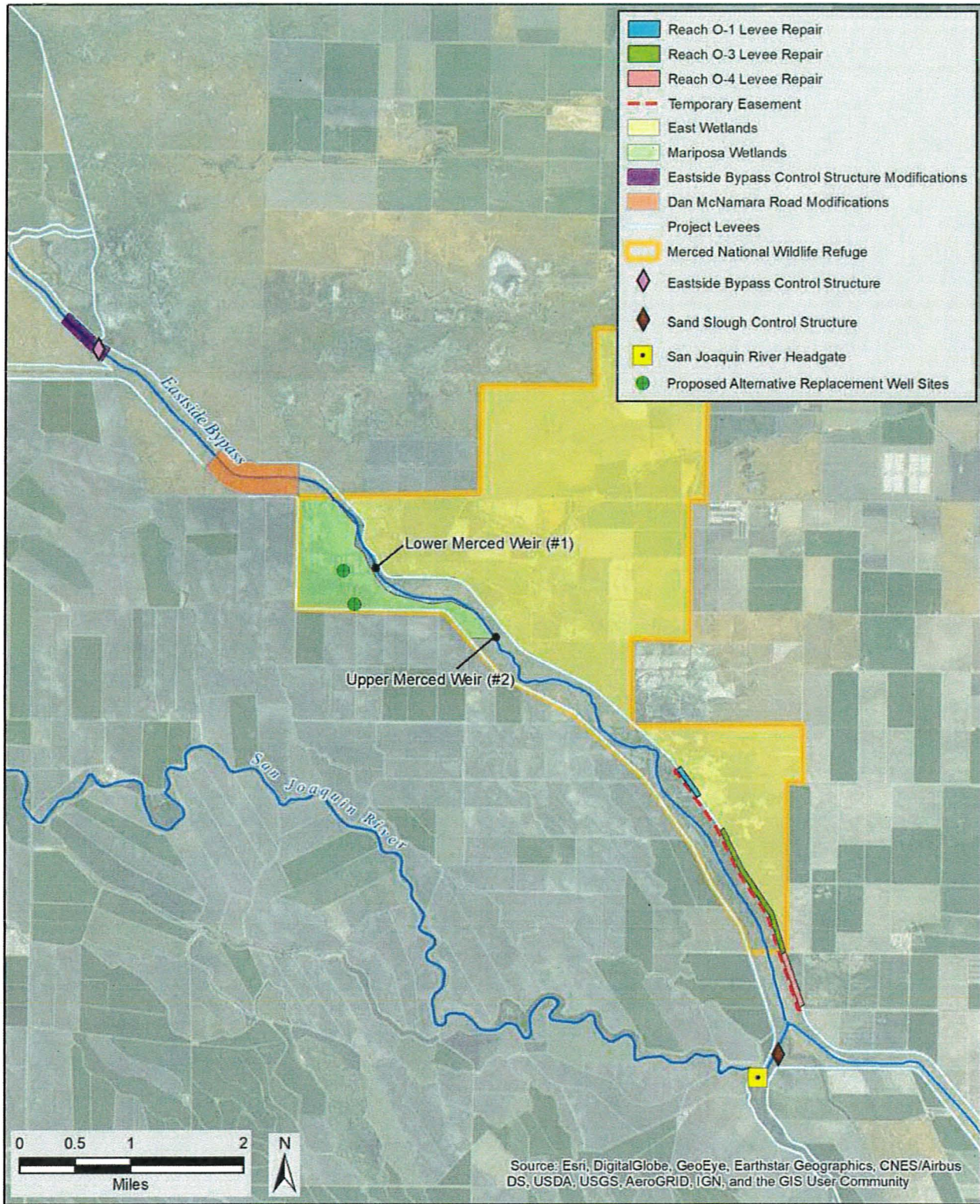
Please refer to identification number SPK-2017-00550 in any correspondence concerning this project. If you have any questions, please contact me at the letterhead address, Room 1350, by email at *Kathy.Norton@usace.army.mil*, or telephone at (916) 557-5260. For more information regarding our program, please visit our website at *www.spk.usace.army.mil/Missions/Regulatory.aspx*.

Sincerely,



Kathy Norton  
Sr. Project Manager  
California South Section

Figure 1-2. Proposed Eastside Bypass Improvements Project Location



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Source: California Department of Water Resources 2017, adapted by GEI Consultants, Inc., 2017