



PUBLIC NOTICE

**U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT**

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**Permit Modification of Programmatic Standard Individual Permit for Maintenance Activities
at the Vern Freeman Diversion Facility**

Public Notice/Application No.: SPL-2013-00171-EBR

Project: Vern Freeman Diversion Facility Maintenance

Comment Period: September 2, 2021 through September 16, 2021

Project Manager: Emma Ross; (805) 585-2149; Emma.B.Ross@usace.army.mil

Applicant

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Location

At the Vern Freeman Diversion Facility on the Santa Clara River, near the community of Saticoy, Ventura County, CA (at: 34.300, -119.110).

Activity

To conduct routine maintenance activities, including sediment management, within a six acre area surrounding the Vern Freeman Diversion, not to exceed 0.8 acre downstream and 1.4 acres upstream (total of 1.48 acre/4,710 cubic yards of surface disturbance) (Figure 2). For more information see Additional Project Information section below.

Submittal of Public Comments

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 404 of the Clean Water Act.

During the Coronavirus Health Emergency, Regulatory Program staff are teleworking. Please do not mail hard copy documents, including comments to any Regulatory staff. Instead, your comments should be submitted electronically to: Emma.B.Ross@usace.army.mil. Should you have any questions or concerns about the Corps' proposed action or our comment period, you may contact Emma Ross directly at (805) 585-2149.

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit

decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. 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. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made an environmental impact statement is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance.

Coastal Zone Management- This project is located outside the coastal zone and preliminary review indicates it would not affect coastal zone resources. After a review of the comments received on this public notice and in consultation with the California Coastal Commission, the Corps will make a final determination of whether this project affects coastal zone resources after review of the comments received on this Public Notice.

Essential Fish Habitat- No Essential Fish Habitat (EFH), as defined by the Magnuson-Stevens Fishery Conservation and Management Act, occurs within the project area and no EFH is affected by the proposed project.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and this site is not listed. This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. The Corps' permit area covered by the existing programmatic individual permit is confined to active channel bottom and areas of previous disturbance associated with the construction and ongoing operation of the facility. As such there is little likelihood of previously unknown cultural resources to be present within the project site.

Endangered Species- The project site supports suitable habitat for four federally listed endangered and threatened species: least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*) and southern steelhead trout (*Oncorhynchus mykiss*). Additionally, the project site also includes designated critical habitat for both the flycatcher and steelhead trout. Habitat for the vireo and flycatcher is generally confined to areas of dense riparian vegetation, which is predominantly found extending upstream of the diversion dam along the right descending bank of the river and the adjacent floodplain. Areas of open water with sufficient depth (generally greater than 6") provide migratory habitat for steelhead trout, both for upstream-migrating adults and downstream-migrating smolts. The project area is not known to provide spawning habitat for steelhead trout, which is concentrated in upstream tributaries. The Freeman Diversion includes a fish ladder to facilitate passage of migrating steelhead trout.

The Corps' preliminary determination is that with the inclusion of avoidance and minimization measures, adverse effects to the listed species and designated critical habitat would be avoided. Coordination with USFWS and NMFS will be conducted as appropriate.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). Portions of the work area support wetlands associated with the Santa Clara River, particularly upstream of the diversion dam. The basic project purpose for the proposed project is maintenance of a water diversion facility, which is water dependent.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to conduct routine maintenance operations of the Vern Freeman Diversion Facility and its appurtenant structures.

Additional Project Information

Baseline information- The Freeman Diversion Facility was constructed in 1991, to provide water for groundwater recharge and help mitigate the effects of saltwater intrusion in the Oxnard Plain. The facility is operated by the United Water Conservation District (UWCD, applicant) and consists of a low, roller compacted concrete dam approximately 20 feet high, which spans the width of the Santa Clara River (approximately 1,200 feet). The diversion inlet and fish ladder are located on the southerly end of the diversion dam. Surface flows are diverted into a system of canals, which in turn deliver water to percolation basins and/or pipelines on the Oxnard Plain. Flood flows that are not diverted or routed through the fish passage facility spill over the diversion dam and continue downstream.

In recent years, under unique drought conditions, patterns of erosion and deposition upstream of the Facility have resulted in areas of sediment build-up that have shifted the thalweg towards the north bank and away from the facility intake. This sediment build-up is interfering with and, if left unaddressed, has the potential to eliminate United's ability to operate the Facility.

The programmatic individual permit issued in December 2019, authorized routine maintenance activities for a period of ten years. The maintenance activities are not intended to alter the established diversion operations, but to ensure the facility is functioning as designed and to meet safety requirements. A previous regional general permit (RGP) was issued in April 2014 covering a similar scope of activities, which expired in March 2019. The Corps was notified of the 2014 reissuance of the RGP being used once in September 2014 (SPL-2014-00583-AJS). Two amendments were made to the 2014 reissued RGP in 2015 and are explained below. Based on a review of maintenance activities conducted under the previous RGP, these actions resulted in minor temporary impacts to waters of the U.S.

Project description- The proposed permit modification would authorize a one-time change to the upstream limits of in-channel sediment control in order to more effectively manage surface flows to ensure continued operation of the diversion and fish ladder (Figure 2). The proposed change is intended to take advantage of the current drought conditions such that no surface flows are anticipated during sediment management.

Proposed Mitigation– The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

Avoidance: Complete avoidance of waters of the United States is not possible in light of the fact that the facility is a water diversion within the Santa Clara River, the maintenance of which would necessitate encroachment into the river to accomplish

Minimization: Minimization measure would include avoiding all pooling waters, seasonal restrictions to avoid affecting federally listed species and nesting birds to the maximum extent practicable, confining vegetation removal to the minimum width necessary to protect structures and allow visual inspection, conducting surveys for federally listed bird species prior to any authorized work conducted during the nesting season.

Compensation: Compensatory mitigation is not proposed at this time. The modified programmatic individual permit would authorize the continuation of maintenance activities that have historically been conducted by UWCD. Mitigation for the construction of the Freeman Diversion, was previously implemented by UWCD. Compensatory mitigation may be required for non-routine repair activities that result in impacts to aquatic resources beyond the scope of typically routine actions. In such cases the need for any compensatory mitigation would be considered on a case-by-case basis at the time work is proposed.

Proposed Special Conditions

The existing programmatic permit includes the following special conditions:

1. The permittee shall provide notification to the Corps prior to any maintenance work authorized under this programmatic individual permit. The notification shall provide details of the proposed work including drawings of any proposed repairs, type and quantity of any imported material to be used (if required), representative site photographs of any damaged facility components requiring repair, an estimate of the area of disturbance within waters of the United States and/or wetlands, and measures undertaken to comply with the terms and conditions of the permit. Work shall not be initiated until a written notice to proceed is issued by the Corps.
2. Stockpiling of imported material to be utilized in repairs (e.g. soil, gravel, armor stone) shall be located outside waters of the United States.
3. In order to prevent adverse impacts to the endangered least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*) and California least tern (*Sternula antillarum browni*), the permittee shall implement the following measures:
 - a) Conduct project activities between September 15 and January 1 to avoid impacts to the subject species during the breeding season;
 - b) Employ qualified biologists to conduct protocol-level surveys if the proposed activities must occur between March 15 and September 15. The proposed activities would not proceed during this time frame if any listed species are observed in the project area during protocol surveys;
 - c) Employ qualified biological monitor(s) to be on-site during vegetation removal and

survey for listed species and other native species. The monitor(s) will ensure that project activities remain within designated areas;

d) Limit the vegetation removal zone around the diversion dam, levees, and roads to 15 feet or less to minimize impacts to riparian habitat used by the least Bell's vireo and southwestern willow flycatcher; and;

e) To the extent possible, minimize impacts on California least tern foraging habitat and prey species by avoiding complete draining of the settling basin when maintenance is required.

4. In order to prevent adverse impacts to southern steelhead trout (*Oncorhynchus mykiss*), the permittee shall implement the following measures:

a) Prior to the start of maintenance activities that may affect aquatic habitat or steelhead, a biologist with knowledge and experience in steelhead identification and ecology will conduct pre-activity surveys for steelhead in the work area. Survey methods for steelhead will include two or more biologists entering the work area to survey for steelhead. If steelhead are found to be present, then maintenance will be rescheduled once flows subside and steelhead volitionally vacate the work area.

b) A biologist knowledgeable and experienced in steelhead identification and ecology will be on the site daily during the start of in-channel maintenance activities (i.e., dewatering, rock riprap repair, or sediment control) and twice a week thereafter as needed to verify endangered SC steelhead are not present in the work area. If endangered SC steelhead are present in the work area, then maintenance will be halted and postponed until the species volitionally vacate the work area.

5. Upon completion of any activity or activities authorized under this programmatic individual permit by a single notice to proceed, the permittee shall provide a post-project report documenting work completed, compliance with the terms and conditions of the permit, results of any biological monitoring (if required), and representative site photographs of any repairs undertaken.

Additional or modified special conditions may be developed in part based on the outcome of consultations with the U.S. Fish & Wildlife Service and National Marine Fisheries Service addressing avoidance and minimization of effects to federally listed endangered species, and/or based on comments provided in response to this public notice.

For additional information please call Emma Ross of my staff at (805) 585-2149 or via e-mail at Emma.B.Ross@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
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