

**Meeting of the Central Valley Flood Protection Board  
July 28, 2023**

**Staff Report for the  
Statement of No Objection**

**Black Rascal Creek Flood Control Project  
Merced County**

**Agenda Item No. 5B**

**1.0 – ITEM**

Approve the final Statement of No Objection (Attachment A) to the U.S. Army Corps of Engineers (USACE) pursuant to Title 33, United States Code Section 408 (Section 408), for the Black Rascal Creek Flood Control Project (Project), and delegate authority to Central Valley Flood Protection Board (Board) staff to transfer operation and maintenance responsibilities for the Project once it is complete to Merced County, the local maintaining agency (LMA) for the Merced County Stream Group.

The Statement of No Objection is the last step to complete the Board's obligation as the non-federal sponsor to provide documentation to complete the Section 408 request.

**2.0 – APPLICANT**

Merced County.

**3.0 – PROJECT LOCATION**

The Project includes the levees of the Black Rascal Diversion, Unit Nos. 1 and 2, in Merced County and is located approximately five miles east-northeast from the City of Merced. The Project footprint extends from where East Yosemite Avenue intersects the Black Rascal Creek Diversion channel northward approximately 0.5 miles to high ground and eastward to North Arboleda Drive. The Project location is shown in Attachment B.

**4.0 – PROJECT DESCRIPTION**

The purpose of the Project is to construct a flood detention basin to attenuate flood flows resulting from the 200-year design event while limiting the peak outflow

downstream of the Project to 3,000 cubic feet per second (cfs). The Project would reduce flood risk for the City of Merced, the community of Franklin-Beachwood, and agricultural lands from frequent flooding, and reduce the risk of inundation of local wastewater treatment facilities to benefit water quality. Within the detention basin, the Project features principal and auxiliary spillways, levee realignment and channel modifications to Black Rascal Creek, habitat enhancements, and drainage facilities.

Proposed work at the 60 percent design stage includes construction of embankments to the west and south to form the 300-acre detention basin, a reinforced-concrete principal spillway to function as a gravity-driven hydraulic constriction to pass the 200-year event, and a cast-in-place auxiliary spillway of 350 feet in length to pass floods that exceed the 200-year principal spillway design event. The Project would realign 1,845 feet of Black Rascal Creek to orient the inflow to the spillway perpendicularly to avoid adverse hydraulic effects. Downstream of the spillway, the channel will be regraded to a uniform cross-section and rock slope protection will be placed in the channel for scour protection. Finally, the Project will restore six acres of agricultural land to wetland and riparian habitat by constructing a main tributary channel to Black Rascal Creek with 56 additional acres created for native trees and grasses by construction of a wide secondary channel.

The Project is currently not part of an ongoing or authorized study by the federal government and is not eligible for credit under Section 221 of the Flood Control Act of 1970. Therefore, the Board is not seeking Section 221 credit. Approval under Section 404 of the Clean Water Act is anticipated to be required for these proposed alterations. The Project will require lands owned by the non-federal sponsor and will not require any lands owned by the USACE.

## **Background**

The Project was initiated by the Merced County Stream Group (consisting of Merced County, the City of Merced, and the Merced Irrigation District) following flood events that occurred in 1998 and 2006 which severely inundated the City of Merced and the nearby communities of Franklin-Beachwood, Firebaugh, and Dos Palos. During the 2006 flood event, 3,400 citizens in these communities were evacuated and over 80 homes were flooded. Property damage that resulted included 300 residences with flood damages of \$18,250,538 and estimated agricultural damages of \$3 million. The 2006 event also endangered the Franklin Water District water system and caused untreated sewer system overflows resulting in water quality and public health concerns in the Franklin-Beachwood area.

Merced County completed a feasibility study in 2008 to “identify and evaluate the effectiveness of alternative detention basin flood control projects that will reduce flood flows in Black Rascal Creek at the diversion.”<sup>1</sup> The study evaluated alternative detention basin configurations, modifications of operating criteria, and infrastructure improvements to Yosemite Lake and district canals to reduce peak flows at the Black Rascal Creek diversion. The preferred alternative was identified as the current Project.

Merced County listed the Project near the top of its Tier 1 project priority list in 2013 as part of the Integrated Regional Water Management Plan for addressing multiple plan objectives and other regional priorities and was included as a proposed system improvement in the 2015 Upper San Joaquin River Regional Flood Management Plan.

The Project was highlighted in the 2022 update to the Central Valley Flood Protection Plan. Merced County secured approximately \$9.7 million from the Department of Water Resources Small Communities Flood Risk Reduction Program and \$10 million from Natural Resources Conservation Service to advance the project to 100-percent design, secure permits, and acquire necessary lands.

A pre-application meeting between Merced County, Board staff and the USACE was held in August 2020. Merced County provided 60% design documents in January 2022. Since then, Board staff and the USACE have collaborated on the review of the design documents and provided comments to Merced County in preparation of the 90% design documents. Merced County has provided a basis of design report that included a geotechnical report, a hydraulics and hydrology report, a report on the required freeboard, and a report on erosion control and armoring. Merced County has engaged a panel of experts to serve on the Safety Assurance Review (SAR) panel as part of the SAR plan.

### **Application of Federal and State Safety of Dams Policies**

The construction of the proposed detention basin has the potential to impound 1,800 acre-feet of runoff at pool capacity, with storage of 717 acre-feet at the 200-year design storm event. Storage is necessary to attenuate flood flows through Black Rascal Creek. The Project limits increases to the 200-year design water surface elevation within the Project footprint to less than 1 foot.

The California Division of Safety of Dams (DSOD) has jurisdiction over non-federal dams in California. After performing an initial review, DSOD determined that the Project

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<sup>1</sup> Merced County Feasibility Study. Black Rascal Creek Flood Control Project. June 2008. Addendum 1, February 2009.

will not be considered a California jurisdictional dam. The Project's non-jurisdictional status is based on Division 3, Part 1, Chapter 1, Section 6002 of the California Water Code, which provides that a dam with a barrier height of less than 6 feet is not under state jurisdiction with respect to dam safety. This determination was based on the ungated principal spillway being at-grade (flush with the bottom of Black Rascal Creek Diversion Channel) and, therefore, does not impound creek flows.

The USACE determined the Project qualifies as a dam under federal policies and procedures due to the potential storage capacity of fifty acre-feet or more.<sup>2</sup> Merced County is preparing LifeSim models to measure consequences of overtopping and a potential failure mode analysis as part of the semi-quantitative risk assessment.

The Project's objective is to confine the waters of Black Rascal Creek within sufficient embankments to adequately protect lives and property from floods. Merced County and Board staff and the USACE will continue to collaborate on the design to confirm that the Project meets current USACE design and construction standards. The final design will provide a Project that will not impair the usefulness of the federal project levee system nor be injurious to the public interest.

### **Section 408 Permission Request**

The USACE Section 408 guidance requires the non-federal sponsor to provide a Statement of No Objection as a basic requirement for a complete request. The non-federal sponsor can provide more than one document over the course of a multi-phase review process, provided that the USACE receives the following information:

- 1) Acknowledgement that the non-federal sponsor is aware of the scope of the project and supports the request being submitted to the USACE.
- 2) Assurance from the non-federal sponsor that it agrees to assume responsibility for any change in the operation and maintenance required of the federal project at no cost to the federal government.
- 3) Any comments from the non-federal sponsor regarding proposed revisions to the operation and maintenance manual.

Merced County submitted its initial request for a Statement of No Objection to the Board for permission under Section 408 in October 2021, which the Board approved in April 2022 after reviewing the 60% design documents. The Board indicated in its April 2022

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<sup>2</sup> Engineering Regulation 1110-2-1156, Safety of Dams – Policies and Procedures, Section 1.6.

Statement of No Objection that it was aware of the scope of the request and supported the initiation of the Section 408 review with the USACE.

Board staff has reviewed the project documents and recommends that the Board make the conclusions reached in the final Statement of No Objection. Board staff expects that approval under Section 404 of the Clean Water Act will be required for the proposed work. The Project will require lands owned by the non-federal sponsor and will not require any lands owned by the USACE. Board staff requests that the Board approve the sending of the Statement of No Objection to complete the Section 408 submittal to the USACE.

By approving the final Statement of No Objection, the Board is delegating authority to Board staff to transfer the operation and maintenance responsibilities required of the completed project to the local maintaining agency. Board staff will review the as-built drawings and revised operation and maintenance manual along with the assurances provided by local interests prior to issuing a letter transferring operation and maintenance responsibilities for the completed project to the local maintaining agency.

#### **5.0 – CALIFORNIA ENVIRONMENTAL QUALITY ACT ANALYSIS AND FINDINGS**

The proposed activity consists of the Board sending a final Statement of No Objection to USACE requesting the USACE to complete its Section 408 design review of the proposed Project. This request complies with the requirements of USACE's Engineering Circular 1165-2-220 that the non-federal sponsor submit a Statement where the requester of the review is not the non-federal sponsor.

The proposed action consists of the Board transmitting a Statement of No Objection letter to complete the USACE Section 408 request. This action will not have a significant effect on the environment and does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and thus, is not a "project" for purposes of the CEQA (CEQA Public Resources Code Section 21065; CEQA California Code of Regulations, Title 14, 15378(a)). Moreover, the Board will perform a full CEQA compliance review prior to approving any permit for which it has jurisdiction.

## **6.0 – STAFF RECOMMENDATION**

Staff recommends the Board:

### **Finds**

- The transfer of the Statement of No Objection to USACE and the delegation of authority to staff to transfer the operation and maintenance responsibilities are continuing administrative activities and thus are not projects (Public Resources Code Section 21065 and CEQA California Code of Regulations, Title 14, Section 15378(a)).

### **Approves**

- The Statement of No Objection to the USACE in substantially the form provided in Attachment A.

### **Delegates**

- To Board staff, the authority to transfer the operation and maintenance responsibilities of the completed Project to the LMA, Merced County.

### **Directs**

- The Executive Officer to sign and send the Statement of No Objection to the USACE.

## **7.0 – ATTACHMENTS**

A. Statement of No Objection

B. Project Location Maps

## **8.0 – REVIEWERS**

Prepared by: Mike Zelazo, Senior Engineer  
Angela Nguyen-Tan, Senior Environmental Scientist

Staff Review: Greg Harvey, Flood System Improvements Branch Chief  
Andrea Buckley, Environmental Services and Land Management  
Division Chief  
Michael C. Wright, Chief Engineer

Legal Review: Jit Dua, Board Counsel

## Attachment A: Statement of No Objection

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, GOVERNOR

### **CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Ste. 170  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682



July 28, 2023

Colonel Chad Caldwell, District Commander  
U.S. Army Corps of Engineers, Sacramento District  
1325 J Street  
Sacramento, California 95814

Subject: Statement of No Objection pursuant to 33 USC 408 for the Merced County Black Rascal Creek Flood Control Project

Dear Colonel Caldwell:

Pursuant to Title 33, United States Code Section 408 (Section 408), the Central Valley Flood Protection Board (Board) submits this second Statement of No Objection in support of the Black Rascal Creek Flood Control Project (Project) proposed by Merced County. The Project involves alterations to the federal levees and channels of the Merced County Stream Group.

The Project includes the levees of the Black Rascal Diversion, Unit Nos. 1 and 2, in Merced County and is located approximately five miles east-northeast from the City of Merced. The Project footprint extends from where East Yosemite Avenue intersects the Black Rascal Creek Diversion channel northward approximately 0.5 miles to high ground and eastward to North Arboleda Drive.

The purpose of the Project is to construct a flood detention basin to attenuate flood flows resulting from the 200-year design event while limiting the peak outflow downstream of the Project to 3,000 cubic feet per second. The Project would reduce flood risk for the City of Merced, the community of Franklin-Beachwood, and agricultural lands from frequent flooding, and reduce the risk of inundation of local wastewater treatment facilities to benefit water quality. Within the detention basin, the Project features principal and auxiliary spillways, levee realignment and channel modifications to Black Rascal Creek, habitat enhancements, and drainage facilities. Construction is expected to begin once a Board encroachment permit is issued and take at least 18 months to complete. The Project is being funded under the California Department of Water Resources' Small Communities Flood Risk Reduction Program and a grant from the Natural Resources Conservation Service.

The Project is a modification to a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project; however, the Board is not seeking credit under Section 221 of the Flood Control Act of 1970. Approval under Section 404 of the Clean Water Act is expected to be

Colonel Chad Caldwell

July 28, 2023

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required for the Project. The Project will require lands owned by the non-federal sponsor but will not require any lands owned by the USACE.

Based on review of 60% plans and other associated documents, the Board concludes that:

- The Board has reviewed the relevant documents and has determined that the improvements will not be injurious to the public interest and will not impair the usefulness of the federal levee system within the Merced County Stream Group.
- Within 180 days of completion of the proposed alteration, the Board will provide information to the USACE for the purpose of preparing a revised operation and maintenance manual for this portion of the Merced County Stream Group and as-built plans and specifications for the alteration.
- If the project is formally incorporated within the Merced County Stream Group by the USACE, the State of California, acting through the Board, will accept the altered project for operation and maintenance and hold and save the United States free from damage due to the construction works.

The Board provided an initial Statement of No Objection to the USACE on May 6, 2022 to request the USACE to initiate review of the Project. The Board submits this second Statement of No Objection to the USACE to indicate that the Board, as the non-federal sponsor for the federal-state flood control facilities within California's Central Valley, is aware of the planning level scope of the project, and the Board supports USACE in evaluating the request for a multi-phased Section 408 review.

If you have any questions regarding this Statement of No Objection, please contact me at (916) 574-0609 or by email at [Chris.Lief@cvflood.ca.gov](mailto:Chris.Lief@cvflood.ca.gov), or your staff may contact Mike Zelazo of my staff at (916) 956-7385 or by email at [michael.zelazo@cvflood.ca.gov](mailto:michael.zelazo@cvflood.ca.gov).

Sincerely,

Chris Lief  
Executive Officer

cc: Dana Hertfelder, Director of Public Works, Merced County  
Michael Clary, Jacobs Engineering  
Michael Fong, USACE Section 408 Coordinator

Encl.: Statement of No Objection from the Board dated May 6, 2022



**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Ste. 170  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682



May 6, 2022

Colonel James J. Handura  
District Commander  
U.S. Army Corps of Engineers, Sacramento District  
1325 J Street  
Sacramento, California 95814

Subject: Request to initiate project review pursuant to Title 33, USC Section 408 for the Merced County Black Rascal Creek Flood Control Project.

Dear Colonel Handura:

Pursuant to Title 33, USC Section 408 (Section 408) as described by the U.S. Army Corps of Engineers (USACE) Engineering Circular 1165-2-220, Section 408, Paragraph 11 a. (Basic Requirements for a Complete Section 408 Request) the Central Valley Flood Protection Board (Board) offers a "Statement of No Objection" to initiate the Section 408 process for the joint review of alterations proposed in the Black Rascal Creek Flood Control Project (Project) to the Black Rascal Diversion Unit Nos. 1 and 2 levees in Merced County.

As the non-federal sponsor for the Project, the Board is aware of the scope of the Section 408 request and supports the request being submitted for review. The Project is located approximately five miles east-northeast from the City of Merced in Merced County. The Project footprint extends from where East Yosemite Avenue intersects the Black Rascal Creek Diversion channel northward approximately 0.50 miles to high ground and eastward to North Arboleda Drive.

The purpose of the Project is to construct a flood detention basin to attenuate flood flows resulting from the 200-year design event while limiting the peak outflow downstream of the Project to 3,000 cubic feet per second. Within the detention basin, the Project features principal and auxiliary spillways, levee realignment and channel modifications to Black Rascal Creek, habitat enhancements, and drainage facilities.

Proposed work includes construction of embankments to the west and south to form the 300-acre detention basin, a reinforced-concrete principal spillway to function as a gravity-driven hydraulic constriction to pass the 200-year event, and a cast-in-place auxiliary spillway of 350 feet in length to pass floods that exceed the 200-year principal spillway design event. The Project would realign 1,845 feet of Black Rascal Creek to orient the inflow to the spillway perpendicularly to avoid adverse hydraulic effects. Downstream of the spillway, the channel will be regraded to a uniform cross-section and rock slope protection will be placed in the channel for scour protection. Finally, the Project will restore 6 acres of agricultural land to wetland and riparian habitat by constructing a main tributary channel to Black Rascal Creek with 56 additional acres created for native trees and grasses by construction of a wide secondary channel.

U.S. Army Corps of Engineers  
May 6, 2022  
Page 2 of 2

The Project is currently not part of an ongoing or authorized Federal study and is not eligible for credit under Section 221 of the Flood Control Act of 1970. Therefore, the Board is not seeking Section 221 credit. Approval under Section 404 of the Clean Water Act is anticipated to be required for these proposed alterations. The Project will not require lands owned by the non-federal sponsor and will not require any lands owned by the USACE.

The Board requests the USACE, in cooperation with other federal agencies and Merced County, to initiate a joint review of possible alterations for the Project. The Board, on behalf of Merced County, will seek approval from the USACE to make necessary alterations to the levee system to achieve the Project purpose.

If you have any questions regarding this Statement of No Objection, please contact me at (916) 574-0609 or by email at [Leslie.Gallagher@cvflood.ca.gov](mailto:Leslie.Gallagher@cvflood.ca.gov), or your staff may contact Mike Zelazo of my staff at (916) 480-5386 or by email at [michael.zelazo@cvflood.ca.gov](mailto:michael.zelazo@cvflood.ca.gov).

Sincerely,

*Leslie M. Gallagher*

Leslie M. Gallagher  
Executive Officer

Encl.: Section 408 Request from Merced County dated October 27, 2021

cc: Dana Hertfelder, Director of Public Works, Merced County  
Chandra Jenkins, USACE Section 408 Coordinator  
Michael Clary, Project Manager, Jacobs Engineering

October 27, 2021

Michael Zelazo  
Central Valley Flood Protection Board  
Plan Implementation and Compliance Branch  
3310 El Camino Avenue, Room 170  
Sacramento, California 95821

**Subject:** Central Valley Flood Protection Board Encroachment Permit and Section 408 Permission Request for Merced County's Black Rascal Creek Flood Control Project in Merced County, California

Dear Mr. Zelazo:

The Merced County Department of Public Work proposes to construct and operate a flood control detention basin to provide flood attenuation and reduce flood-related damages to the city of Merced and surrounding areas. The Project includes construction of a detention basin, spillways, habitat enhancements, and drainage facilities. A pre-application meeting with Deb Biswas, Ali Porbaha, Gary Lemon, James Herota, and Andrea Mauro from CVFPB was held August 18, 2020.

A DWR Regulated Stream and federal civil works project levees associated with Black Rascal Creek occur at the Project site. Accordingly, an Encroachment Permit from CVFPB and USACE review of the Project under Section 408 of the Rivers and Harbors Act is anticipated.

For the purposes of 408 review, the Natural Resources Conservation Service is the lead for federal consultations. Please direct any questions about federal consultation to Steve Hill (530-792-5642; [steve.hill@ca.usda.gov](mailto:steve.hill@ca.usda.gov)).

The Project is expected to result in permanent and temporary impacts to approximately 3.136 acres of wetlands and other waters and is requesting an Individual Permit from the USACE Sacramento District.

On behalf of Merced County, the following enclosed materials are being submitted as an application for a Central Valley Flood Protection Board Encroachment Permit:

- Figure 1: Site Vicinity and Location Map
- Figure 2: Impacts to Waters of the State
- Attachment 1: Forms 3615 and 3615a
- Attachment 2: Project Description, Design, and Site Photographs.
- Attachment 3: Biological Evaluation Technical Memorandum
- Attachment 4: Aquatic Resources Delineation Report
- Attachment 5: Hydraulics and Hydrology Report

Michael Zelazo  
October 27, 2021  
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Please contact me (510-610-3007; Michael.Clary@jacobs.com) with any questions or if there is any additional information you require.

Regards

A handwritten signature in black ink, appearing to read "Michael Clary". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Clary".

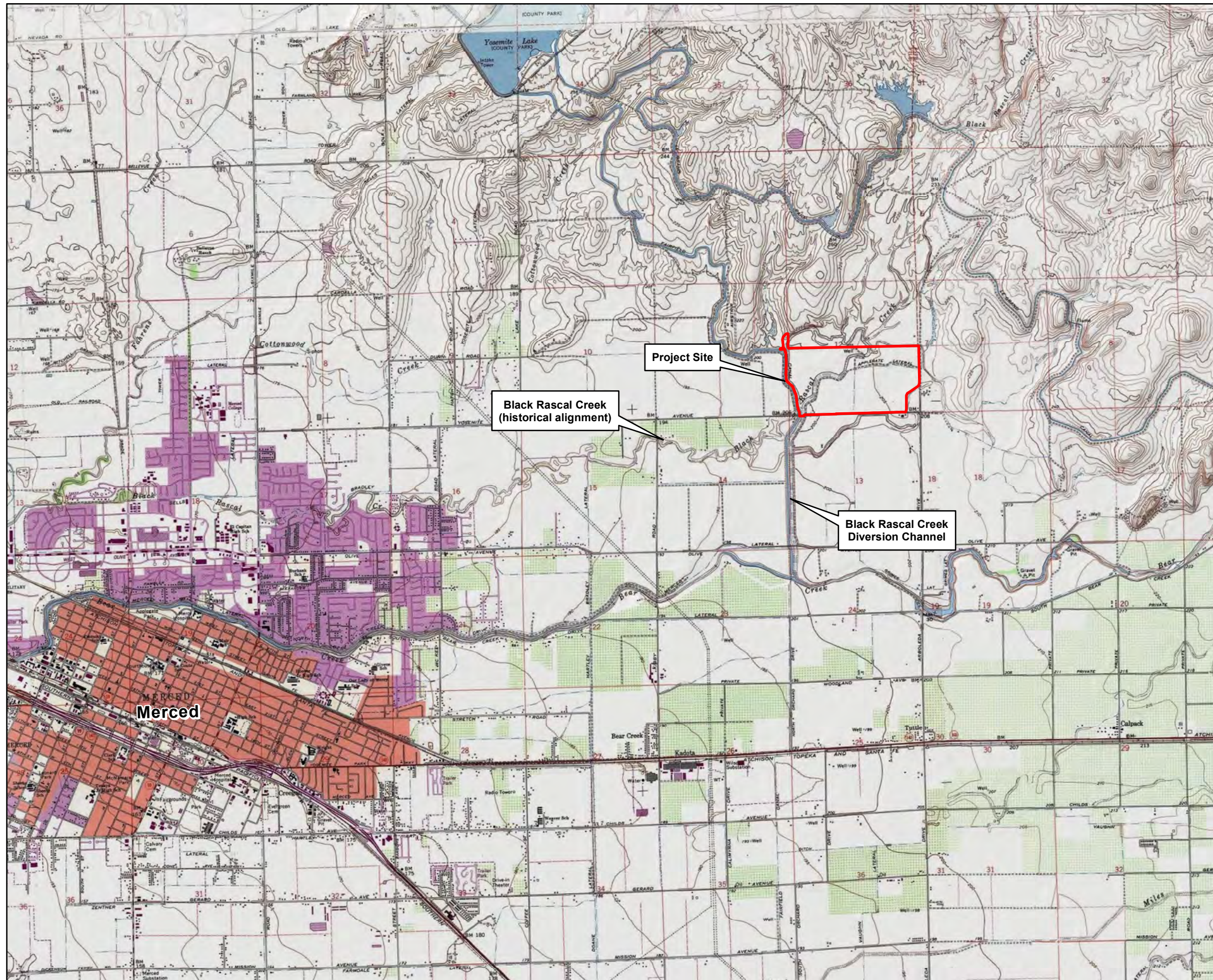
Michael Clary  
Project Manager

Copies to: Oscar Ortiz/Merced County  
John Schoonover/Jacobs

Enclosures:

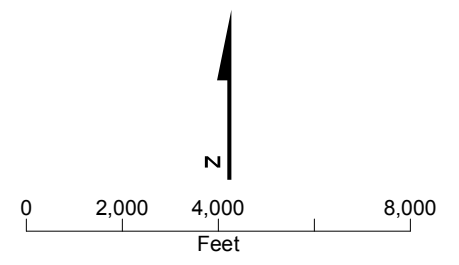
2 hard copies of the encroachment permit application  
\$7000 permit review fee payment  
1 electronic copy (CD) of the encroachment permit application

**Figure 1**  
**Site Vicinity and Location Map**



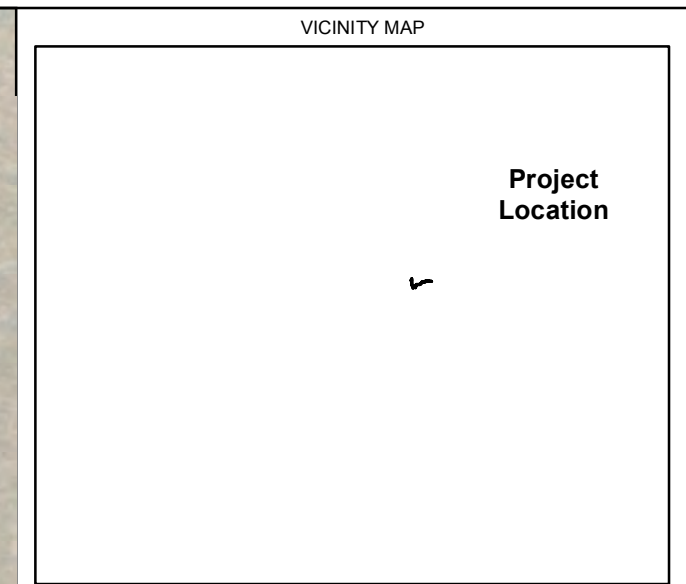
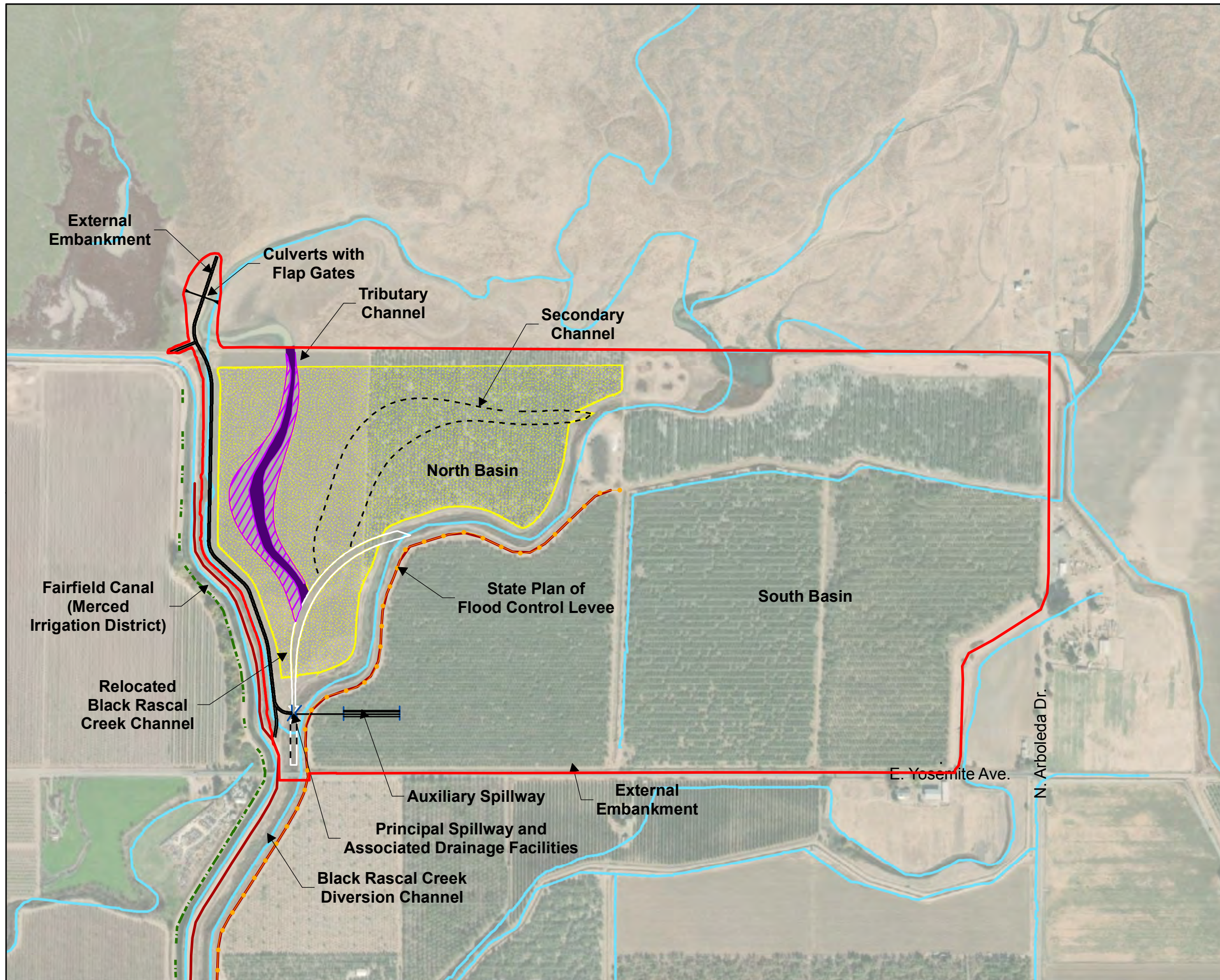
**LEGEND**  
 Project Footprint

Service Layer Credits: Copyright:© 2013 National Geographic Society, I-cubed National Geographic, Esri, Garmin, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, increment P Corp.

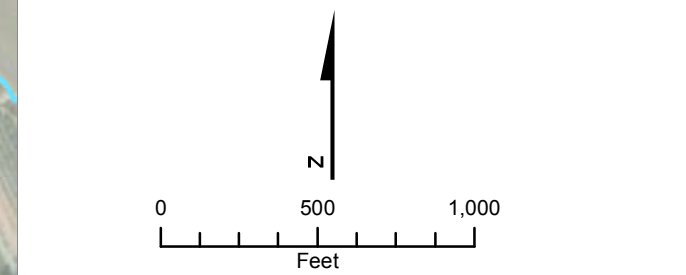


**FIGURE 1**  
**Vicinity Map**  
 Central Valley Flood Protection Board  
 Encroachment Permit Application  
 Black Rascal Creek Flood Control Project

**Figure 2**  
**Impacts to Waters of the State**



- LEGEND**
- Project Footprint
  - Embankment
  - Waterway
- Federal Civil Works Projects**
- Merced Stream Group – Black Rascal – Unit 1
  - Merced Stream Group – Black Rascal – Unit 2
- Habitat Enhancements**
- Aquatic (2.08 acres)
  - Valley Foothill Riparian (4.2 acres)
  - Oak Savanna (56.4 acres)

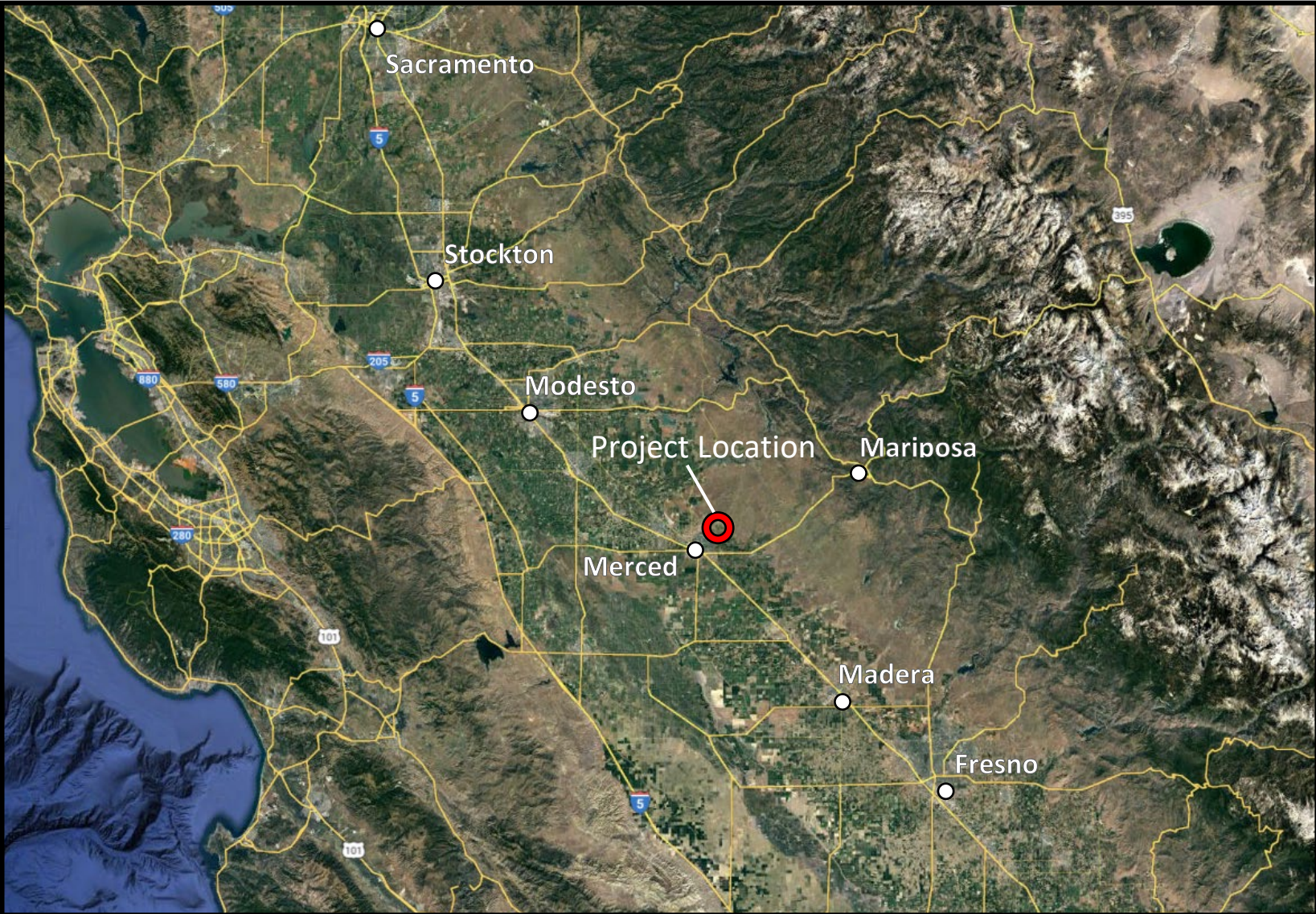



**FIGURE 2**  
**Site Plan**  
Central Valley Flood Protection Board  
Encroachment Permit Application  
Black Rascal Creek Flood Control Project





Attachment B: Project Location Maps



 Merced County  
Black Rascal Creek Flood Control Project  
Final Statement of No Objection

Source: Google Earth

Figure 1: Regional Map

Attachment B: Project Location Maps (cont.)



Merced County  
Black Rascal Creek Flood Control Project  
Final Statement of No Objection

Source: Google Earth

Figure 2: Vicinity Map