



# PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

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## APPLICATION FOR PERMIT

### Reissuance of Regional General Permit for Maintenance Activities at the Vern Freeman Diversion Facility

**Public Notice/Application No.:** SPL-2013-00171-AJS

**Project:** Vern Freeman Diversion Facility Maintenance RGP

**Comment Period:** August 6, 2013 through September 5, 2013

**Project Manager:** Antal Szijj; Phone: 805-585-2147; email: [Antal.J.Szijj@usace.army.mil](mailto:Antal.J.Szijj@usace.army.mil)

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#### **Applicant**

Catherine McCalvin  
United Water Conservation District  
106 North 8th Street  
Santa Paula, California 93060

#### **Contact**

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Santa Paula, California 93060

#### **Location**

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

#### **Activity**

To conduct routine maintenance activities at the Vern Freeman Diversion Facility in association with Vern Freeman Diversion Facility Maintenance RGP (see attached drawings). For more information see page 3 of this notice.

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Interested parties are hereby notified that 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 support 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 of 1972 (33 U.S.C. 1344). Comments should be mailed to:

U.S. Army Corps of Engineers  
Ventura Field Office  
2151 Alessandro Drive, Suite 110  
Ventura, CA 93001  
Attn: SPL-2013-171-AJS

Alternatively, comments can be sent electronically to: [Antal.J.Szjij@usace.army.mil](mailto:Antal.J.Szjij@usace.army.mil)

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 that 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 that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. For any proposed activity on Tribal land that is subject to Section 404 jurisdiction, the applicant will be required to obtain water quality certification from the U.S. Environmental Protection Agency.

**Coastal Zone Management**- This project is located outside the coastal zone and preliminary review indicates that 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**- Preliminary determinations indicate the proposed activity would not adversely affect essential Fish Habitat. Therefore, formal consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) is not required at this time.

**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 area covered by the proposed RGP is confined to active channel bottom and areas of previous disturbance associated with the construction 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 three federally listed endangered species: least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), 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 surrounding the diversion facility along the left descending bank are more sparsely vegetated and do not provide similar habitat conditions. 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. A plan to replace the existing ladder with a ramp built into the dam is currently being developed by United Water Conservation District (UWCD). The new ramp would be subject to a separate Corps permit authorization, however the RGP may be amended at a future date to incorporate maintenance activities associated with the new ramp (if constructed).

Maintenance activities authorized under the proposed RGP, including activities such as surface water diversions and vegetation removal, could result in direct and indirect disturbance to endangered species and their associated habitat. UWCD would implement construction activities during periods when federally listed species are absent from the work area to the maximum extent practicable, however unforeseen maintenance needs during periods when these species may be present could occur. Based on a review of the existing conditions within the project area and the scope of the proposed maintenance activities, proposed measures to avoid and minimize adverse effects to federally listed endangered species, the Corps has determined the proposed action may adversely affect each of the above-described endangered species. Therefore the Corps will initiate formal consultation pursuant to Section 7 of the Endangered Species Act with the U.S. Fish & Wildlife Service to address effects to the vireo and flycatcher, and the National Marine Fisheries Service to address effects to steelhead trout.

**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 in to 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 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 the water to percolation basins on the Oxnard Plain. Flood flows in excess of the facility's capacity to divert spill over the diversion dam and continue downstream.

The diversion facility detains surface and subsurface flows on the Santa Clara River behind the dam, which in turn has resulted in the development of extensive stands of riparian habitat

dominated by willow (*Salix* sp.). Existing habitat surrounding the diversion facility includes areas of shallow, open-water habitat with dense stands of willow-riparian habitat.

Project description- The proposed RGP would authorize the routine maintenance activities described above for a period of five years. The maintenance activities proposed are not intended to alter the established diversion operations, but to ensure the facility is functioning as designed and to meet safety requirements. No maintenance work that would change the character, size, or extent of structural features associated with the diversion facility would be authorized under this RGP. Notification to the Corps would be required prior to conducting maintenance work under the proposed RGP. The RGP would be subject to renewal after the five-year period based on an assessment of its effectiveness and verification that the maintenance activities do not result in more than minimal effects on the aquatic environment, either individually or cumulatively. A previous RGP was issued in October 2005 covering a similar scope of activities, which has since expired. 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.

Specific maintenance activities to be authorized under the RGP include the following:

- Annual removal (and prevention of growth) of all vegetation from the dam and in a 15-foot zone on both sides of the dam. The purpose of this maintenance is to prevent damage to the concrete dam and to maintain the ability for visual inspection of the structure. Vegetation will be removed through herbicide application and manual clearance using a Caterpillar D6 Dozer. UWCD staff would attempt to limit the clearance area to a width of approximately 10 feet. The maximum width that would be cleared is 15 feet. In the event that clearance activities result in a clearance of the maximum width, the total cleared area would be 30 feet (15 feet on either side of the crest of the dam) by 1,175 feet, which is approximately 0.80 acre. The area of vegetation removal has been subject to this activity for many years which has prevented the establishment of riparian vegetation. Based on previous years' experience, vegetation targeted for removal would consist of immature early growth and dominated by non-native species. To avoid disturbing nesting vireos and flycatchers nearby and steelhead migrating through the area, vegetation removal will be performed after the nesting period (September 15) and before the steelhead migration period (January 1).
- Annual removal (and prevention of growth) of vegetation from all access points (roads and ramps) within a 15 foot zone along the toe of rip-rap located between the diversion dam (beginning directly above the diversion structure) and the downstream end of the desilting basin (Figure 1). The purpose of this maintenance is to prevent habitat from developing along access points (roads and ramps) and to provide the ability for visual inspections to prevent damage and weakening of channel bank armoring. Vegetation would be removed using herbicide application, hand tools and manual clearance of regrowth with a Caterpillar D6. UWCD staff would attempt to limit the clearance area to a width of approximately 10 feet. The maximum width that would be cleared is 15 feet. In the event that clearance activities resulted in a clearance of the maximum width, the total cleared area would be 15 feet by 5,185 feet (linear length of rip-rap including the small section directly above the diversion structure), which is approximately 1.8 acres. Not all of this area is currently within the Corps geographic jurisdiction, however this condition could change with sediment redistribution during flood events, which may cause the river to migrate laterally into areas which are currently considered uplands. To accommodate this possibility, the RGP would cover the entire reach of bank armoring and access points. The area of vegetation removal has been subject to this activity for many years which has prevented the establishment of riparian vegetation; except

for the small section directly above the diversion structure. Based on previous years' experience, vegetation targeted for removal will be immature early growth, and dominated by non-native species. To avoid disturbing nesting vireos and flycatchers nearby and steelhead migrating through the area, vegetation removal would be performed after the nesting period (September 15), and before the steelhead migration period (January 1).

- Cutting of a low-flow channel from the entrance of the fish ladder to the thalweg of the river. Below the Freeman Diversion Dam, the Santa Clara River is characterized by a wide, braided, sandy channel. Winter run-off results in sediment deposits below the diversion dam that may inhibit a direct steelhead migration route to the fish ladder located within the diversion facility along the left descending channel bank. Maintenance of this channel is warranted every 1-3 years and requires bulldozing a channel when sediments build-up. The length of the channel will vary depending on the location of the natural thalweg at the time but will not exceed 100 yards. The maximum area of disturbance would be 300 feet by 15 feet or approximately 0.10 acre and can be completed within a day. To avoid disturbing nesting vireos and flycatchers nearby and steelhead migrating through the area, cutting of the low-flow fish channel would be performed after the nesting period (September 15), and before the steelhead migration period (January 1).
- In-kind repair of rip-rap bank stabilization and access roads. Large storm events may result in erosion of access roads and rip-rap channel bank armoring. Damage to roads can inhibit operations by preventing access to facilities, and loss of rip-rap can destabilize the banks and threaten the integrity of the facility or structure being protected by the rip-rap. In either case, the degree and frequency of repair required will vary depending on the damage sustained. The level of damage will also determine whether repairs would need to be completed immediately or can be scheduled for a future date. In severe cases, repairs would involve clearing the area of material, importing and compacting material in the damaged area, and in the case of rip-rap repair, replacing the lost rip-rap material. Less severe damage may not involve all steps. Required machinery would vary depending on the degree of damage, but could include backhoe or dozer with a sheep's foot, graders, excavators, scrapers, or a water truck. This is an as-needed procedure and will vary depending upon damage sustained. Since construction of the Freeman Diversion, the largest project associated with these types of repair involved replacement of all rip-rap adjacent to the desilting basin. That project encompassed approximately 2 acres. Access roads and rip-rap structures are regularly cleared of vegetation, and therefore these areas do not provide riparian habitat. Operations of heavy machinery involved in the repair work will be limited to areas along existing access routes and directly adjacent to the repair area. This procedure is likely to require the addition of imported soil. Any material involved in the repairs will be stored outside of the streambed. The required amount of soil will be approximately equivalent to the amount of material washed away during the damage. When possible, repairs will take place after the nesting period (September 15) and before the steelhead migration period (January 1).
- Periodic draining of the desilting basin. United operates a desilting basin along its diversion canal that allows silt to fall out of the water and settle into the basin before the water continues further down the diversion canal system. Before the water reaches the basin, flocculent polymer is added to the water that adheres to the silt, allowing silt to fall out and settle in the basin. There are occasions where it is necessary to lower the water levels in the basin to perform the draining procedure such as maintenance and repairs of gates and sediment removal of built up sediment in the basin (average occurrence is once every 3-5 years). There is a gate that allows for drainage of the water from the north side of the basin into the south

side of the Santa Clara River bed. This procedure is typically performed during the dry part of the year, when there is no flow at this location in the river. On average 3-10 cubic feet per second (cfs) are released anywhere from one day up to a few months to allow the basin water level to lower to the necessary level to perform the procedure. During this procedure sediment may be conveyed through the gate and deposit within the Santa Clara River immediately adjacent to the drainage outfall.

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 will necessitate encroachment into the river to accomplish.

**Minimization:** Minimization measure would include 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 proposed RGP 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**

Special conditions will 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.

For additional information please call Antal Szijj of my staff at 805-585-2147 or via e-mail at [Antal.J.Szijj@usace.army.mil](mailto:Antal.J.Szijj@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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**U.S. ARMY CORPS OF ENGINEERS – LOS ANGELES DISTRICT**

Ventura Field Office

2151 Alessandro Drive, Suite 110

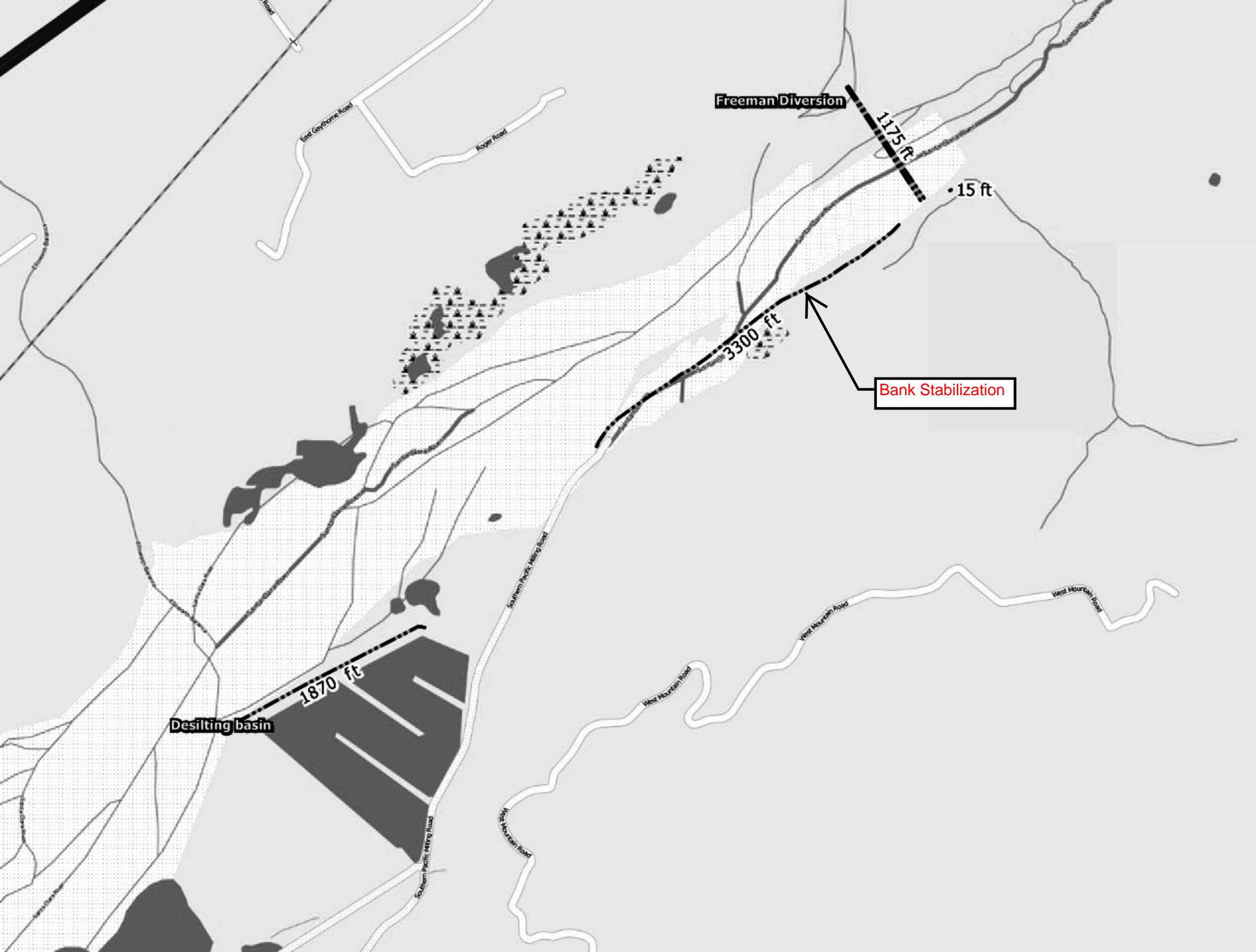
Ventura, CA 93001

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Freeman Diversion

0 5 mi



Freeman Diversion

1175 ft

15 ft

Bank Stabilization

3300 ft

Desilting basin

1870 ft

East Geybhone Road

Roger Road

Southern Pacific Milling Road

West Mountain Road

West Mountain Road

Southern Pacific Milling Road

West Mountain Road