

Urban and agricultural land uses within the New Alamo Creek and Ulatis Creek watersheds depend on these creeks and the associated inlet and flow structures to convey storm water runoff rapidly to prevent flooding and damage to property. It is not reasonable to simply eliminate storm water discharges from urban or agricultural lands to New Alamo Creek or Ulatis Creek given that development and land use practices within that watershed have taken place with the understanding that flood protection would be maintained at a consistent level.

Furthermore, agricultural irrigation facilities within the watershed rely on the creek system to efficiently convey irrigation and agricultural drainage water. The distribution systems of Solano Irrigation District and Maine Prairie Water District are integrated with the current configuration of New Alamo Creek and Ulatis Creek. Solano Irrigation District operates the Brown-Alamo Dam on New Alamo Creek, and Maine Prairie Water District operates diversion dams on both New Alamo Creek and Ulatis Creek to divert, in part, Solano Irrigation District agricultural drainage water.

Restoration of hydrologic modifications is not feasible given that urban and agricultural land uses within the New Alamo Creek and Ulatis Creek watersheds rely on the protections provided by the channel improvements and storm water drainage structures, and use of these channels to convey irrigation water and Easterly WWTP effluent. Furthermore, even if the channel improvements were eliminated and reverted to more natural conditions, runoff from the urban and agricultural lands would still flow to these channels, but in a less efficient manner. Thus, the flows in the creeks would still be comprised largely of urban and agricultural storm water runoff and Easterly WWTP effluent throughout the precipitation period of the year.

In short, the urban and agricultural land uses cannot be eliminated and returned to natural, undeveloped lands nor can they be operated in a manner that would produce water quality within the segments suitable for MUN use.

5.4 If MUN is neither Existing nor Attainable, is a Lesser Type and Degree of this Use Occurring or Expected to Occur?

States may adopt use sub-categories and set the appropriate criteria to reflect varying needs of such sub-categories of use (40 CFR § 131.10(c)). However, subcategories of uses should only be developed and adopted in cases where they are needed to identify and appropriately protect uses that are actually occurring or uses reasonably expected to occur in the future.

As discussed in Section 5.1.1 and in RBI (2007b), no form of municipal or domestic use of water diverted from the UAA study segments is presently occurring. The sources of water to the UAA study segments are expected to be the same in the future as they are today. Predominant land uses in the watersheds are not expected to change and, thus, will continue to be agricultural and urban. Thus, the UAA study segment waters are expected to continue to be unsuitable for use as a municipal or domestic water supply. Other higher quality source waters within the region, which include groundwater, Delta waters via the North Bay Aqueduct, and Lake Berryessa water via the Solano Project are available currently, and will continue to be available in the future. Given the current and future expected quality of the UAA study segment waters and the availability of higher quality water supplies, UAA study segment waters are unlikely to be

utilized for municipal or domestic supply for the foreseeable future. The city of Vacaville's water supplies have been evaluated as part of its 2005 Urban Water Management Plan and it has been determined that these supplies are in excess of the General Plan buildout demand (Nolte Associates 2005). Based on current and projected future water quality within the UAA study segments and the fact that alternative higher quality water supplies exist within the area for both municipalities (i.e., groundwater, Delta waters, and Lake Berryessa) and individual homeowners along the UAA study segments (i.e., groundwater), no form of municipal or domestic supply use of UAA study segment waters is expected to occur in the future.

6 APPLICABILITY OF STATE WATER BOARD RESOLUTION NO. 88-63

The State Water Board Resolution No. 88-63, also referred to as the "Sources of Drinking Water Policy," states:

"All surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards with the exception of:

1. Surface and ground waters where:

- a. *The total dissolved solids (TDS) exceeds 3,000 mg/L (5,000 uS/cm, electrical conductivity) and it is not reasonably expected by Regional Boards to supply a public water system, or*
- b. *There is contamination, either by natural processes or by human activity (unrelated to a specific pollution incident), that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable treatment practices, or*
- c. *The water source does not provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day.*

2. Surface waters where:

- a. *The water is in systems designed or modified to collect or treat municipal or industrial wastewaters, process waters, mining wastewaters, or storm water runoff, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards; or,*
- b. *The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards."*

The State Water Board has determined that a UAA is required to dedesignate an MUN use, even if a water body is within one of the Resolution No. 88-63 exceptions. It also has, however,

concluded that a water body need not meet one of the 88-63 numbered exceptions in order to dedesignate the MUN use for that water body (e.g., Old Alamo Creek, Solano County – see State Water Board Resolutions 2006-0008 and 2006-0009). Thus, the specific relevance of Resolution No. 88-63 exceptions may be limited. However, the Regional Water Board in a previous UAA has considered the characteristics of Old Alamo Creek (Vacaville, CA) in light of Resolution No. 88-63 exceptions (Tetra Tech 2004). Thus, Resolution No. 88-63 exceptions are considered in this UAA, as well.

The following discussion assesses whether the UAA study segments meet one or more of the exceptions defined above. Specifically, the discussion below evaluates whether the water in the UAA study segments flows:

- a) within channels where “*There is contamination, either by natural processes or by human activity (unrelated to a specific pollution incident), that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable treatment practices.*” [exception 1b], and
- b) within “*...systems designed or modified to collect...storm water runoff.*” [exception 2a]

For the purpose of this assessment, the term “storm water runoff” is defined as the water that flows over developed urban and agricultural lands where it is then routed into constructed or modified drainage systems to be rapidly conveyed from the local area, thereby minimizing or avoiding flooding of these lands. It does not include water generated from precipitation events that is: a) directly absorbed into the ground, or b) naturally conveyed from undeveloped watershed lands via natural water courses.

The information presented in Sections 5.1, 5.2, and 5.3 of this UAA report, which collectively demonstrate that the 40 CFR § 131.10(g)(3) factor is satisfied by conditions within the UAA study segments, also demonstrates that Resolution No. 88-63 exception 1b is met.

The following discussion is presented in support of determining whether exception 2a to Resolution No. 88-63 also is satisfied by the UAA study segments. In March 1961, under the authority of the Watershed Protection and Flood Preservation Act (P.L. 566, as amended), the Ulatis Soil Conservation District, Solano Irrigation District, and Solano County Flood Control and Water Conservation District jointly developed the “*Watershed Work Plan: Ulatis Creek Watershed*” (Ulatis Creek Watershed Work Plan) to reduce flooding of the agricultural properties within the Ulatis Creek watershed (Ulatis Soil Conservation District et al. 1961). As stated in the Ulatis Creek Watershed Work Plan summary, p. 1-1, “*Frequent and damaging floods inundate vast areas of the lower 65,000 acres of the watershed...The works of improvement proposed in the work plan would reduce significant flooding to a once in ten-year event.*” The improvement works identified in the 1961 Ulatis Creek Watershed Work Plan consisted of: 1) land treatment measures (e.g., conservation cropping system, proper range use, pasture plantings) and 2) structural measures. The structural measures included “*...improvement or realignment of 51.9 miles of floodwater channels together with the construction of drop and grade stabilization structures and inlet structures to convey local runoff into the channels.*” (emphasis added). In addition, the Ulatis Creek Watershed Work Plan directed the raising of existing levees and

construction of new levees to protect the lands adjacent to Cache Slough. As stated in the Ulatis Creek Watershed Work Plan (p. 1-10), *"A system of flood gates and pumping facilities will also be installed to remove local runoff from behind the levees."* (emphasis added). (Ulatis Soil Conservation District et al. 1961). **Figure 18** identifies the locations of the channel improvements.

In December 1965, a report titled *"A Survey of Storm Drainage Southeast of Interstate Highway 80, Vacaville"* was prepared by M.C. Yoder Associates, Consulting Engineers for the City of Vacaville (Yoder Associates 1965). This report was prepared to address storm water runoff from existing and planned urban areas within the watershed. The summary of this report states:

"With the advent of urban development in the area between Interstate Highway 80 and Leisure Town Road, it was necessary to develop a long-range plan for drainage improvements to prevent future drainage problems; thereby, allowing the development of a well integrated system capable of serving the urban tributary areas. Some of the land in the study area has been subject to flooding. However, this will be alleviated as soon as the Alamo and Ulatis Creek improvements proposed in the Ulatis Creek Watershed Work Plan is completed."

The Basis of Storm Drainage Design section of Yoder Associates (1965) states:

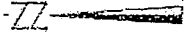
"Where storm drains discharge to Alamo, Ulatis, or Horse Creek, the terminal elevations of the proposed storm drains were established to permit gravity discharge to the streams after the channel improvements set forth in the Ulatis Creek Watershed Work Plan are completed."

The Yoder Associates (1965) storm water drainage work was designed to collect and convey urban storm water runoff into the modified drainage system constructed under the Ulatis Creek Watershed Work Plan (Ulatis Soil Conservation District et al. 1961).

The Ulatis Creek Watershed Work Plan (p. 2-14, p. 1-1) states, *"Drastic relocations were required in the case of both Alamo and Ulatis Creeks inasmuch as the location of their present channels is on high ground, precluding their effectiveness as flood channels. ... All structural measures included in the plan will be operated and maintained by the Solano County Flood Control and Water Conservation District."*

With regard to Ulatis Creek, the Ulatis Creek Watershed Work Plan (p. 1-10, 2-15) states:

"No improvements will be made on the natural channel between Vacaville and a point approximately one-fourth mile above the Cooper School. From this point to Cache Slough, the lower project limit, the channel improvement will be continuous, consisting of the construction of approximately 4.9 miles of new channel and the straightening and enlargement of 9.7 miles of existing channel. Grade stabilization or drop structures will be provided where necessary. ... A reinforced concrete chute will convey the flows from the Rabbit Creek bypass into Ulatis Creek at the upper end of the improved reach." (emphasis added).



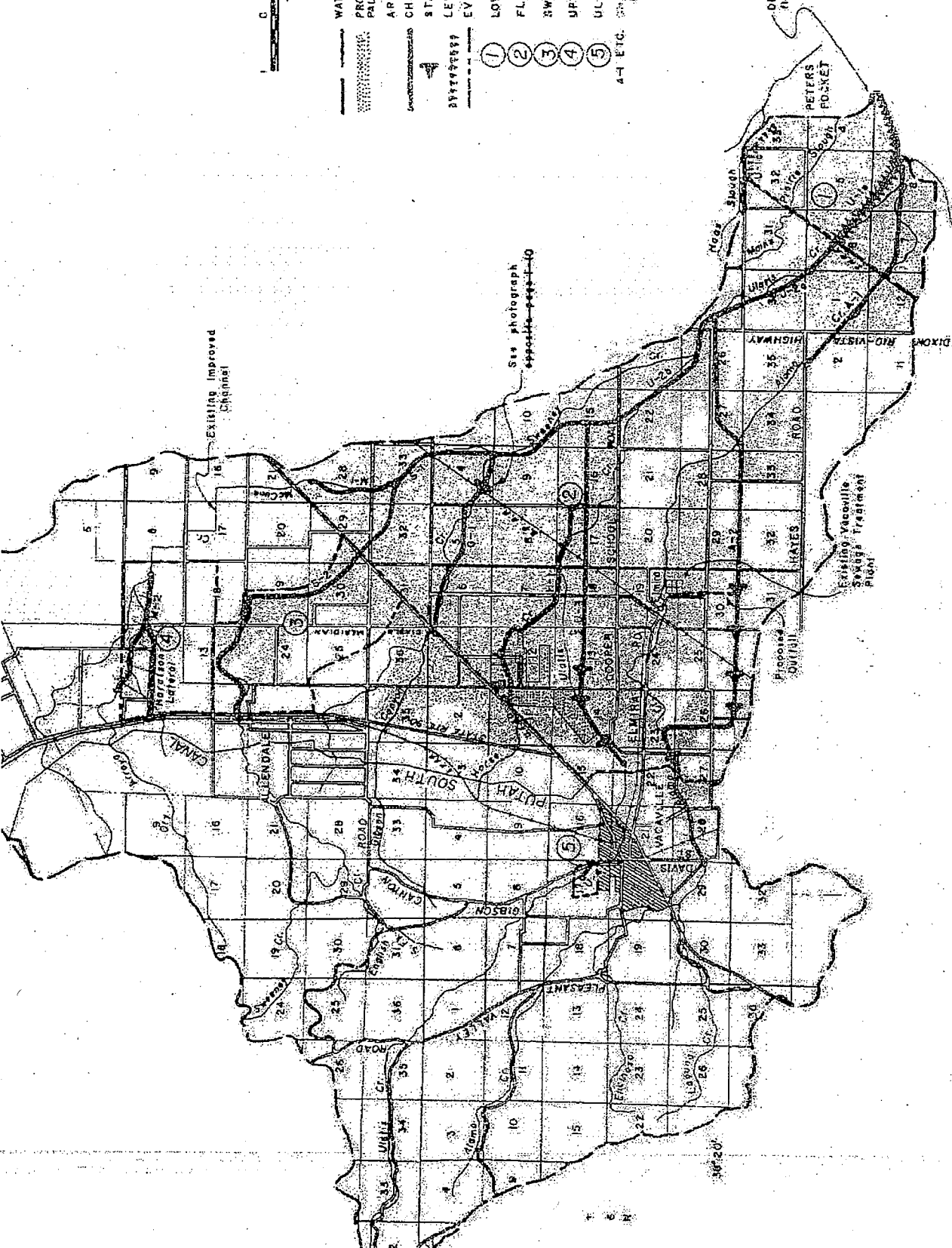
SCALE IN MILES



LEGEND

- WATERSHED BOUNDARY
- PROPOSED LEISURE TOWN AND LOCK PADDOON RESIDENTIAL AREA
- APCA BENEFITED
- CHANNEL IMPROVEMENT UNITS
- STABILIZATION STRUCTURES
- LEVEES
- EVALUATION UNIT BOUNDARY

- LOWER UNIT
- FLOOD PLAIN UNIT
- SWEENEY-3 UNIT
- UPPER MCGUHE UNIT
- ULATIS-4 UNIT
- 4-1 ETC. (See Table 203)



Facilities to evacuate from Lower Alameda Creek

Dike and facilities to evacuate from Maria-Palatis Slough U-16

WORK PLAN

PROJECT MAP
ULATIS CREEK WATERSHED PROJECT

ULATIS SOIL CONSERVATION DISTRICT
SOLANO COUNTY, CALIFORNIA

CALIFORNIA DEPARTMENT OF NATURAL RESOURCES DIVISION OF SOIL
U. S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION
Prepared by S.D.C. Date Jan. 1961

The fact that storm drain inlets and bypasses structures were constructed to convey local runoff into the newly constructed channels presented the need to enlarge their conveyance capacity, as cited above. Additionally, the Ulatis Creek Watershed Work Plan states, *“The use of flood detention reservoirs in the foothill area is not effective because of the large local inflow on the valley floor.”*

As shown in **Figure 19**, a storm drain was planned to convey the runoff from area “EH,” east of Leisure Town Road, and from there the drain would extend northward to the new, constructed Ulatis Creek channel alignment (Yoder Associates 1965).

For Alamo Creek, the Ulatis Creek Watershed Work Plan (p. 1-11) states:

“The first unit will include an improved channel to convey the flood flows from the upper project area (Davis Street) to an intersection with Ulatis Creek at a point approximately one-half mile to the east of the intersection of the Elmira Road and the Dixon Highway. The improvements on the upper 2.1 miles of this unit consist of clearing of brush and trees and removal of snags from the existing channel. Below this reach a new trapezoidal earthen channel will be constructed.”

This new trapezoidal channel was constructed to more effectively collect and convey storm water runoff from agricultural and urban lands because the historic Alamo Creek channel (in the area of modification) meandered through higher ground, thereby precluding it from effectively collecting and conveying storm water. The newly constructed, trapezoidal channel contains three drop structures and flap gates at the confluence of “Old Alamo Creek,” which is referred to in the As Built drawings as “Wycoff drain inlet” (see SCFCWCD (1966), p. 005411).

As shown in **Figure 20**, storm drains were planned to convey the runoff from area “ES” and “ET,” to a storm drain on the west side of Leisure Town Road that would, in turn, convey the flow south to the newly constructed Alamo Creek channel (Yoder Associates 1965).

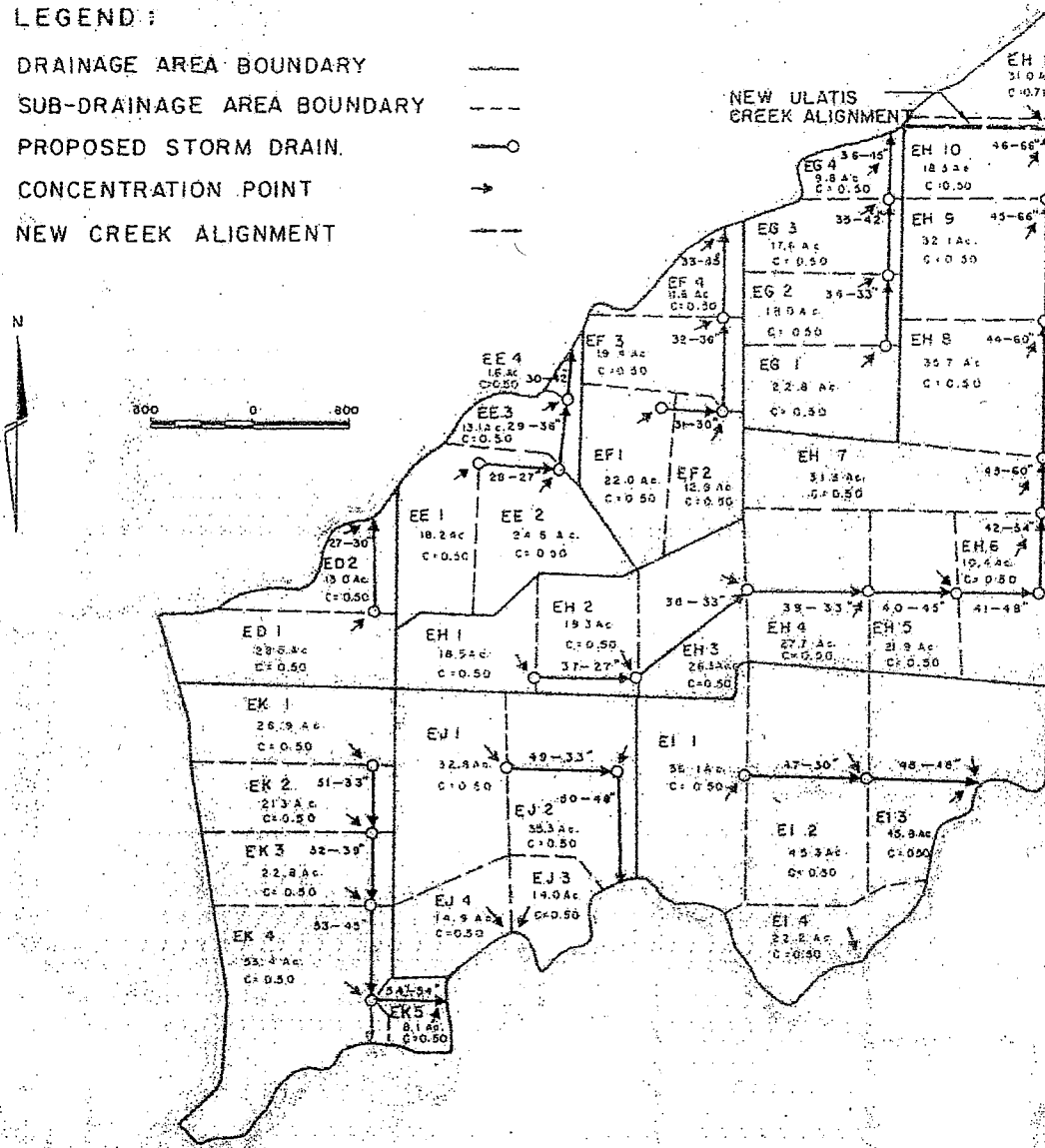
Hence, it is clear from Ulatis Soil Conservation District et al. (1961) and Yoder Associates (1965) that what is called “New Alamo Creek” today is an engineered, realigned, constructed channel that serves as an integral component of an overall storm drainage/flood control plan. Likewise, segments of present-day Ulatis Creek were engineered and realigned for the same purpose. Today, the physical characteristics of these channels, and the waters they convey, reflect their origins.

Based on the information presented above, it is apparent that structural modification made to the UAA study segments were not merely limited to armoring of banks and levees and channelization to improve natural water body conveyance, as occurs on many natural water courses in the State and throughout the Nation. Rather, the structural measures implemented under the Ulatis Creek Watershed Work Plan were highly engineered facilities that included improved inlets, gravity drain and pump structures, flood-control flap gates, newly constructed trapezoidal channels, and concrete gradient control structures.

Figure 5-3. PROPOSED DRAINAGE AREAS ED - EE - EF - EG - EH - EI - EJ - EK

LEGEND :

- DRAINAGE AREA BOUNDARY ———
- SUB-DRAINAGE AREA BOUNDARY - - - - -
- PROPOSED STORM DRAIN —○—
- CONCENTRATION POINT →
- NEW CREEK ALIGNMENT ———



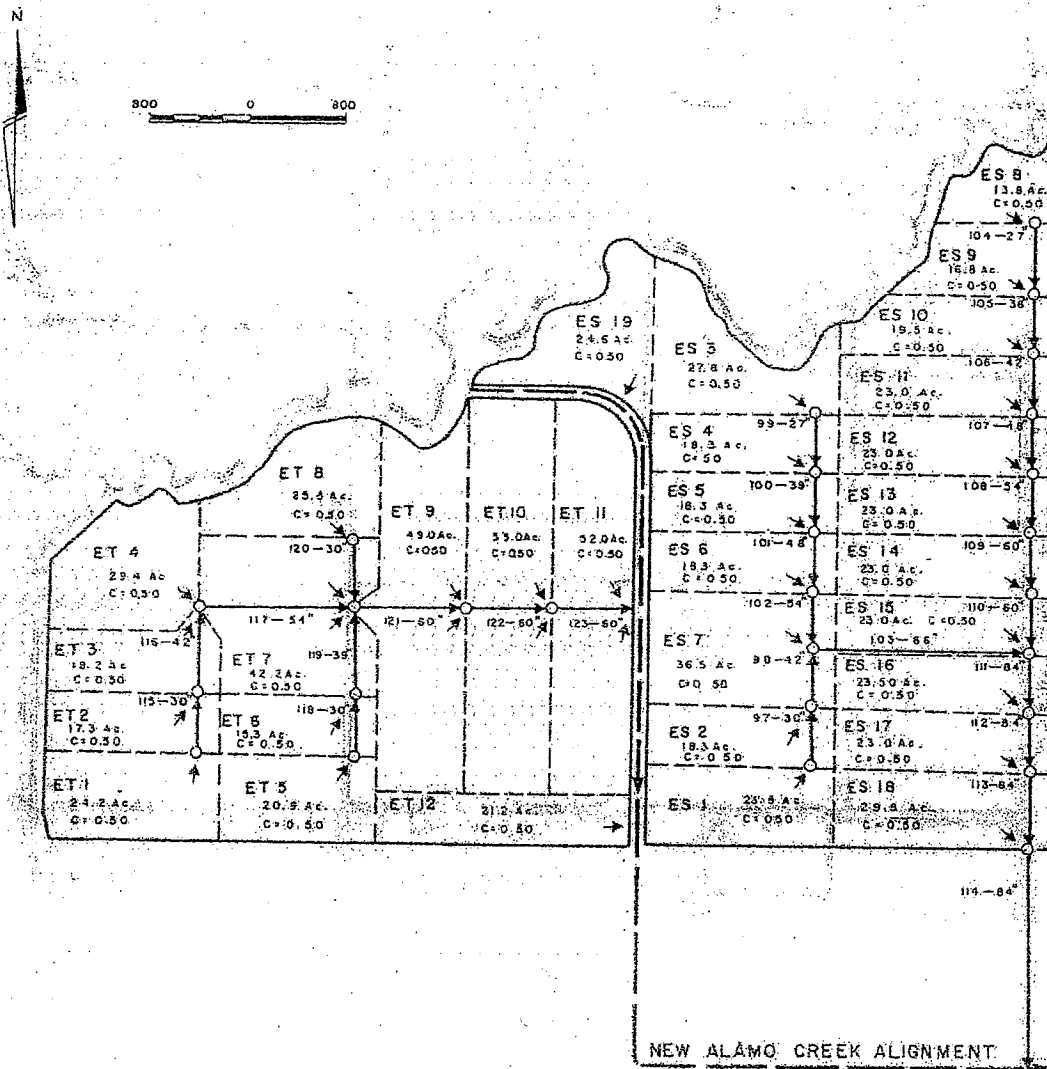
Source: Yoder Associates 1965.

Figure 19. Proposed storm drain routes for the drainage areas south of Ulatis Creek and west of Leisure Town Road.

Figure 5-4. PROPOSED DRAINAGE AREAS ES - ET

LEGEND :

- DRAINAGE AREA BOUNDARY ———
- SUB-DRAINAGE AREA BOUNDARY - - - -
- PROPOSED STORM DRAIN —○—
- CONCENTRATION POINT →
- NEW CREEK ALIGNMENT ———



Source: Yoder Associates 1965.

Figure 20. Proposed storm drain routes for the drainage areas south of Alamo Creek and west of Leisure Town Road.

These facilities were designed to work in concert to effectively collect and convey local runoff from developed urban and agricultural lands into the newly aligned and constructed channels with expanded flow capacities. To effectively convey local runoff in perpetuity, this designed system required that an agency be assigned operations and maintenance responsibility, which initially was assigned to the Solano County Flood Control and Water Conservation District. As such, the information presented above demonstrates that the UAA study segments have been modified to collect and convey storm water runoff and, therefore, satisfy the conditions defined for exception 2a to Resolution No. 88-63.

These designed systems have been intensively managed and maintained since their construction to collect and convey storm water runoff and, over time, have become increasingly important in their role to convey agricultural irrigation and return waters to further support agriculture on adjacent lands.

7 MUN USE DESIGNATION AND RESOLUTION NO. 88-63 EXCEPTION

7.1 MUN Use Designation

The CWA factors for allowing a State to remove a designated use are listed in 131.10(g). This UAA has demonstrated that the MUN use in the UAA study segments is neither an existing use nor an attainable use. The MUN use has never occurred in the segments since November 28, 1975, nor has water quality within the segments been suitable to support the use since November 28, 1975. Because the use is not an existing use, it can be dedesignated if it can be demonstrated that one or more of the 40 CFR § 131.10(g) factors precludes attainment of the use. It has been demonstrated (see Section 5.2 of this UAA) that attaining the MUN use is not feasible because:

- factor 40 CFR § 131.10(g)(2) is satisfied during the non-precipitation period of the year, and
- factor 40 CFR § 131.10(g)(3) [as affected, in part, by factor 40 CFR § 131.10(g)(4)] is applicable year-round.

The primary sources of water to the segments throughout the year produce pathogen, nitrate, organic carbon, and uncertain pesticide and other contaminant loadings that result in water quality conditions such that the use of these waters for MUN is ill advised and discouraged. This is particularly true when adequate higher quality alternative MUN water supplies are available within the area to both individual homeowners and municipalities.

Because this UAA report finds that the MUN use is neither an existing nor attainable use in the UAA study segments of New Alamo Creek and Ulatis Creek, and no lesser type and degree of the use is occurring or expected to occur in the future, it is recommended that the MUN use be dedesignated for these segments. This UAA did not address segments of New Alamo Creek or Ulatis Creek upstream of the upper end of the defined study segments, nor does this UAA assess whether MUN is an existing or attainable use in Alamo Creek or its tributaries Encinosa Creek and Laguna Creek.

7.2 Resolution No. 88-63 Exception

Based on the information presented in Section 6 of this report, it is concluded that water in the UAA study segments flows:

- within channels where, “*There is contamination, either by natural processes or by human activity (unrelated to a specific pollution incident), that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable treatment practices.*” [exception 1b], and
- within, “*...systems designed or modified to collect....storm water runoff.*” [exception 2a]

As such, and consistent with the conclusions and recommendation presented in Section 7.1, it is recommended that the UAA study segments be exempted from State Water Board Resolution No. 88-63 pursuant to exceptions 1b and 2a.

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A Professional Corporation

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 813 Sixth Street, Third Floor, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On May 23, 2008, I served the following document(s)

DECLARATION OF MICHAEL BRYAN, Ph.D. IN SUPPORT OF CITY OF VACAVILLE'S REQUEST FOR STAY OF ORDER NOS. R5-2008-0055 AND R5-2008-0056

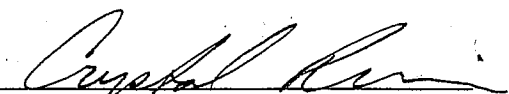
XX (by mail) on all parties in said action, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid thereon, in the designated area for outgoing mail, addressed as set forth below:

Pamela Creedon, Executive Officer California Regional Water Quality Control Board, Central Valley Region 11020 Sun Center Drive, #200 Rancho Cordova, CA 95670	Gerald Hobrecht, City Attorney Shana Faber, Assistant City Attorney City of Vacaville 650 Merchant Street Vacaville, CA 95688
Lori T. Okun, Esq. State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100	

XX (by electronic service) I hereby certify that a true and correct copy of the foregoing will be e-served on May 23, 2008 as listed below:

Elizabeth Miller Jennings State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100 Email: bjennings@waterboards.ca.gov	
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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 23, 2008, at Sacramento, California.


Crystal Rivera