



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 23-24, 2012

Title	Agenda Item Type
Judicial Branch Report to the Legislature: Report on Flood Control and Water Conservation Liability in Los Angeles County	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
N/A	N/A
Recommended by	Date of Report
Administrative Office of the Courts Jody Patel, Interim Administrative Director of the Courts	March 23, 2012
	Contact
	David Smith, 415-865-7696 david.smith@jud.ca.gov

Executive Summary

The Administrative Office of the Courts (AOC) recommends that the Judicial Council approve the *Report on Flood Control and Water Conservation Liability* covering the reporting period of 2007 through 2011. Government Code sections 831.8 and 831.9 require that the Judicial Council report to the Legislature on the receipt of summary records of injuries and any civil actions ensuing from such injuries sustained by members of the public, in the unlined flood control channels and adjacent groundwater recharge spreading grounds in Los Angeles County.

Recommendation

The AOC recommends that the Judicial Council:

1. Approve the *Report on Flood Control and Water Conservation Liability* covering the reporting period of 2007 through 2011; and
2. Direct the AOC to submit the report to the Legislature.

Previous Council Action

In past years, AOC staff have submitted this report to the council as an information-only item. These reports were also submitted, on behalf of the council, by AOC staff to the Legislature.

Rationale for Recommendation

The submission of this report by the Judicial Council to the Legislature is required under Assembly Bill 193 and Government Code sections 831.8 and 831.9.

Comments, Alternatives Considered, and Policy Implications

This report was not circulated for comment because it is strictly informational in nature. No alternatives were considered because this report is required by legislative statute.

Implementation Requirements, Costs, and Operational Impacts

There are no costs or operational impacts to implementing the information outlined in this report. There are no recommendations made in this report beyond that of compliance with reporting requirements mandating submission of the report to the Legislature under the provisions specified by AB 1903 and Government Code sections 831.8 and 831.9.

Attachments

1. Report on Flood Control and Water Conservation Liability
2. Legislative Report Summary



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Chief Justice of California
Chair of the Judicial Council

JODY PATEL
Administrative Director of the Courts

CURT SODERLUND
Chief Deputy Director

March 23, 2012

Ms. Diane F. Boyer-Vine
Legislative Counsel
State of California
State Capitol, Suite 3021
Sacramento, California 95814

Mr. Gregory P. Schmidt
Secretary of the Senate
State Capitol, Room 400
Sacramento, California 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: Report on Flood Control and Water Conservation Liability (Gov. Code, §§ 831.8, 831.9)

Dear Ms. Boyer-Vine, Mr. Schmidt, and Mr. Wilson:

Enclosed please find the Judicial Council's report on flood control and water conservation liability, as required under Government Code sections 831.8 and 831.9. This report is based on documentation received from the Los Angeles County Department of Public Works, the agency that is subject to the provisions of these statutes.

Ms. Boyer-Vine, Mr. Schmidt, and Mr. Wilson

March 23, 2012

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If you have any questions related to this report, please contact David Smith, PhD, senior research analyst in the Office of Court Research, Administrative Office of the Courts (AOC), at 415-865-7696 or david.smith@jud.ca.gov.

Sincerely,

Dag MacLeod, Manager
AOC Office of Court Research

WAV/DAS/das

Enclosures

cc: Curtis L. Child, Director, AOC Office of Governmental Affairs
Judicial Administration Library (2 copies)



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Report title: *Report on Flood Control and Water Conservation Liability*

Statutory citation: Assembly Bill 193, Government Code Sections 831.8 and 831.9

Date of report: March 23, 2012

The Judicial Council is submitting the enclosed report to the Legislature in accordance with Assembly Bill 1903 and Government Code sections 831.8 and 831.9.

The following summary of the report is provided under the requirements of Government Code section 831.8.

In accordance with Assembly Bill 1903, the Los Angeles Department of Public Works has maintained records of any injuries sustained by members of the public, and the results of any civil actions ensuing from such injuries, in the unlined flood control channels and adjacent groundwater recharge spreading grounds in Los Angeles County. Qualifying injuries include those that occur during groundwater recharge activities, while records of civil actions include all civil claims that are paid or unpaid arising from such incidents.

The Department of Public Works reports that no qualifying incidents were reported nor related civil actions filed during the reporting period of January 1, 2007, through December 31, 2011.

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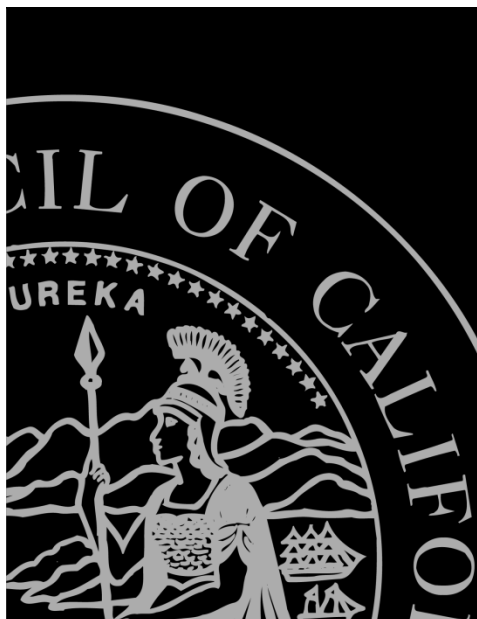
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Flood Control and Water Conservation Liability

REPORT TO THE LEGISLATURE UNDER
ASSEMBLY BILL 193, GOVERNMENT
CODE SECTIONS 831.8 AND 831.9

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Flood Control and Water Conservation Liability
Report to the Legislature
Assembly Bill 1903
Government Code Sections 831.8 and 831.9

Background

Government Code section 831.8 provides that neither a public agency that operates flood control and water conservation facilities nor its employees shall be liable for injuries caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds under prescribed conditions.

Assembly Bill 1903 (Hernandez; Stats. 2008, ch. 633) amended Government Code section 831.8 to extend the operative date of that section through January 1, 2013, and added and repealed section 831.9 in order to continue requiring annual reports on the subject to the Judicial Council and for the council to report to the Legislature (see Appendix A).

Assembly Bill 1903 requires the Los Angeles County Department of Public Works to maintain a record of injuries incurred by the public—and the results of any ensuing civil actions—in the unlined flood control channels or adjacent groundwater recharge spreading grounds during groundwater recharge activities. The county must file a copy of that record with the Judicial Council. This report summarizes that record in compliance with the statute.

Summary of Findings

The Administrative Office of the Courts has received a report from the County of Los Angeles covering the calendar years 2007 through 2011, pursuant to the requirements of Government Code section 831.8 (see Appendix B). This report and documentation presented in Appendix C indicates that the department has undertaken the following preventative actions designed to ensure the safety of the public:

- Warning signs have been posted in multiple locations to inform and caution the public of any increase in water-flows in unlined flood control channels and adjacent spreading grounds (see Appendix C for a map of channels and sign locations).
- A reporting procedure has been implemented for all of the county's Department of Public Works field personnel.

The results of the monitoring and recording process implemented by Los Angeles County indicate the following:

Claims or Lawsuits

There is no record of any claims or lawsuits that involved injuries or deaths in unlined flood control channels or adjacent spreading grounds having been filed against the Department of Public Works during calendar years 2007 to 2011.

Injuries and Fatalities

There were no recorded injuries or deaths in unlined flood control channels in Los Angeles County during the calendar years 2007 to 2011.

Independent Verification of Accidents and Claims

Filings and disposition data received by the Administrative Office of the Courts do not allow the identification of civil cases related to injuries or deaths in the types of facilities specified by Government Code section 831.8. A search of the Westlaw and Lexis databases revealed no case filings in California involving injuries or deaths in unlined flood control channels in Los Angeles or any other California county. The report submitted by the Los Angeles Department of Public Works is assumed to constitute the record of accident and case activity related to the reporting requirements of AB 1903 and Government Code sections 831.8 and 831.9.

APPENDIX A

Government Code Sections 831.8 and 831.9

(as modified in 2008 by Assembly Bill 1903)

831.8. (a) Subject to subdivisions (d) and (e), neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used.

(b) Subject to subdivisions (d) and (e), neither an irrigation district nor an employee thereof nor the state nor a state employee is liable under this chapter for an injury caused by the condition of canals, conduits, or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or state intended it to be used.

(c) Subject to subdivisions (d) and (e), neither a public agency operating flood control and water conservation facilities nor its employees are liable under this chapter for an injury caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds if, at the time of the injury, the person injured was using the property for any purpose other than that for which the public entity intended it to be used, and, if all of the following conditions are met:

- (1) The public agency operates and maintains dams, pipes, channels, and appurtenant facilities to provide flood control protection and water conservation for a county whose population exceeds nine million residents.
- (2) The public agency operates facilities to recharge a groundwater basin system which is the primary water supply for more than one million residents.
- (3) The groundwater supply is dependent on imported water recharge which must be conducted in accordance with court-imposed basin management restrictions.
- (4) The basin recharge activities allow the conservation and storage of both local and imported water supplies when these waters are available.
- (5) The public agency posts conspicuous signs warning of any increase in waterflow levels of an unlined flood control channel or any spreading ground receiving water.

(d) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

- (1) The injured person was not guilty of a criminal offense under Article 1 (commencing with Section 552) of Chapter 12 of Title 13 of Part 1 of the Penal Code in entering on or using the property.
- (2) The condition created a substantial and unreasonable risk of death or serious bodily harm when the property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.
- (3) The dangerous character of the condition was not reasonably apparent to, and would not have been anticipated by, a mature, reasonable person using the property with due care.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(e) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

- (1) The person injured was less than 12 years of age.
- (2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children under 12 years of age using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used.
- (3) The person injured, because of his or her immaturity, did not discover the condition or did not appreciate its dangerous character.
- (4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(f) Nothing in subdivision (c) exonerates a public agency or public employee subject to that subdivision from liability for injury proximately caused by a dangerous condition of public property if all of the following occur:

- (1) The person injured was 16 years of age or younger.
- (2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children 16 years of age or younger using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used.
- (3) The person injured did not discover the condition or did not appreciate its dangerous character because of his or her immaturity.
- (4) The public entity or public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(g) Subdivisions (c) and (f) shall become inoperative on and after January 1, 2013.

831.9. (a) The County of Los Angeles Department of Public Works shall maintain a record of all known or reported injuries incurred by the public in the unlined flood control channels or adjacent groundwater recharge spreading grounds during the activities of groundwater recharge. The County of Los Angeles Department of Public Works shall also maintain a record of all claims, paid and not paid, including any civil actions or proceedings and their results, arising from those incidents, that were filed against the county. Copies of these records shall be filed annually, no later than January 1 of each year, with the Judicial Council, which shall then submit a report to the Legislature on or before January 31, 2012, on the incidences of injuries incurred, claims asserted, and the results of any civil action or proceeding filed by persons injured at these facilities.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

APPENDIX B

**Report by County of Los Angeles Department of Public Works:
Liability Related to Injuries, Deaths, and Claims in Unlined Channels and Spreading
Grounds—Calendar Years 2007–2011**



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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CONFIDENTIAL

February 8, 2012

IN REPLY PLEASE REFER TO FILE: **SMP-4**
2-15.21CR

Mr. David A. Smith
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Administrative Office of the Court
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Dear Mr. Smith:

ASSEMBLY BILL 1903

Assembly Bill 1903 requires, until January 1, 2013, that the County of Los Angeles Department of Public Works (Public Works) maintain a record of injuries, and the results of any civil actions ensuing therefrom, that are incurred by the public in the unlined flood control channels or adjacent groundwater recharge spreading grounds during groundwater recharge activities and a record of all claims, paid and not paid, arising from those incidents. Assembly Bill 1903 requires Public Works to annually file a copy of that record with the Judicial Council.

We have satisfied all requirements outlined within Assembly Bill 1903.

Previously, on January 31, 2012, we reported to you by e-mail that there was one incident on May 9, 2011, on the Rio Hondo Bike Path. Upon further investigation, it was discovered that the incident occurred in the concrete lined channel area, just north of the spreading grounds at Whittier Boulevard. Therefore, we have no qualifying incidents to report for the time period of January 1, 2007, to December 31, 2011.

If you require additional information, please contact me at (626) 458-7015.

Very truly yours,

GAIL FARBER
Director of Public Works

A handwritten signature in blue ink, appearing to read "S.G. Steinhoff".

STEVEN G. STEINHOFF
Assistant Deputy Director
Survey/Mapping & Property Management Division

ARM:hp
P4:L ARM ASSYBILL 1903

APPENDIX C

Los Angeles County: Maps of Advisory Sign Locations for Unlined Channels and Adjacent Spreading Facilities

AB2023 LIABILITY COMPLIANCE PLAN

ADVISORY SIGN LOCATION MAP

FOR UNLINED CHANNELS AND ADJACENT SPREADING FACILITIES

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FEET 2000
MILES 0.379

LEGEND

- ▲ Canyon Advisory Sign
- River Advisory Sign
- ◆ Spreading Ground Sign



NOTE: All sign locations were field located by Global Positioning System (GPS).

AML: s:\arcspacelw\sig\lami_dirform_dirform_std.aml Prepared by: fireman

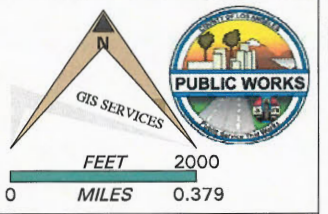
AB2023 LIABILITY COMPLIANCE PLAN

ADVISORY SIGN LOCATION MAP

FOR UNLINED CHANNELS AND ADJACENT SPREADING FACILITIES

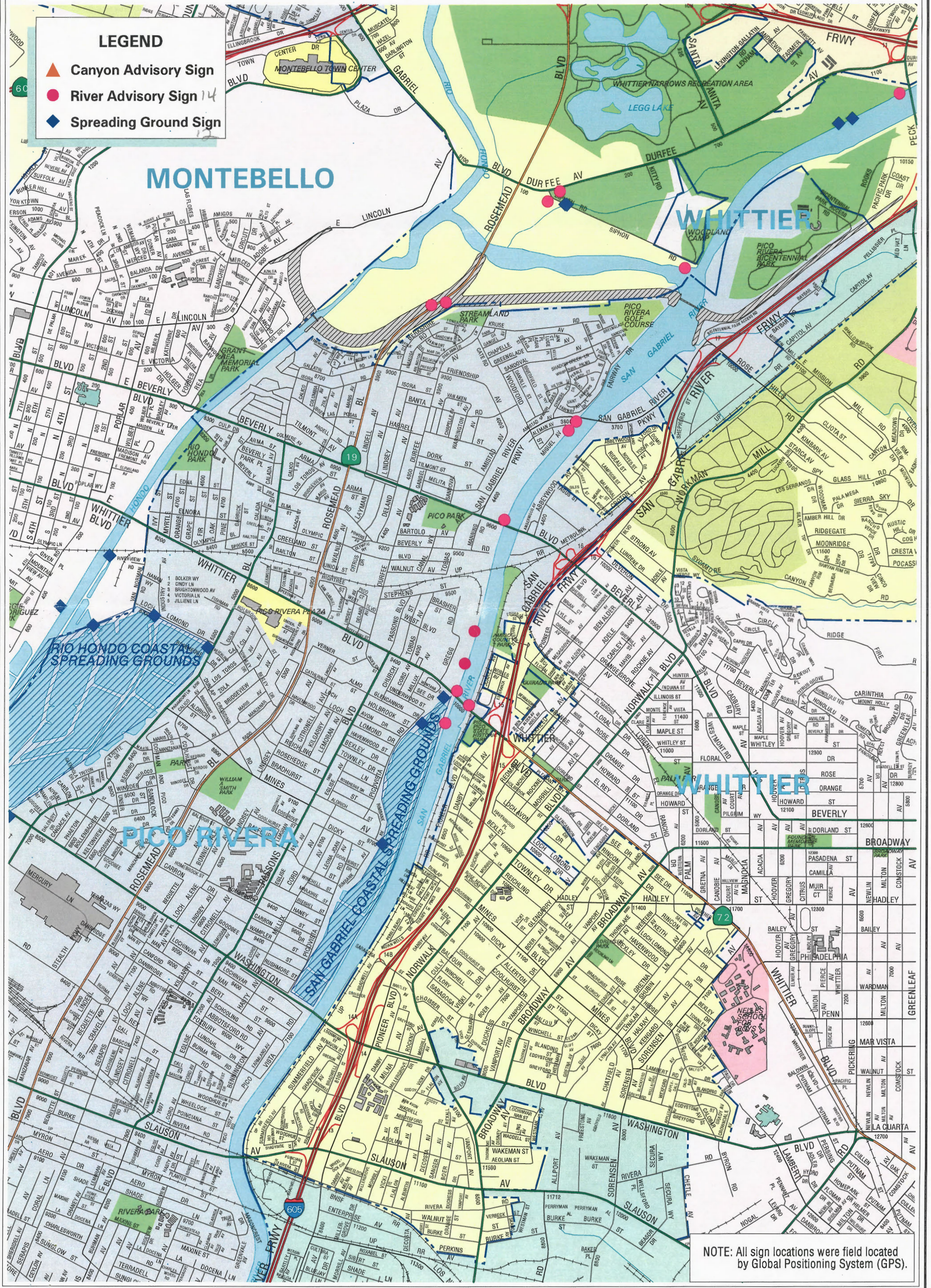
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LEGEND

- ▲ Canyon Advisory Sign
- River Advisory Sign
- ◆ Spreading Ground Sign



NOTE: All sign locations were field located by Global Positioning System (GPS).

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AB2023 LIABILITY COMPLIANCE PLAN ADVISORY SIGN LOCATION MAP

FOR UNLINED CHANNELS AND ADJACENT SPREADING FACILITIES

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LEGEND

-  Canyon Advisory Sign
-  River Advisory Sign
-  Spreading Ground Sign



NOTE: All sign locations were field located by Global Positioning System (GPS).




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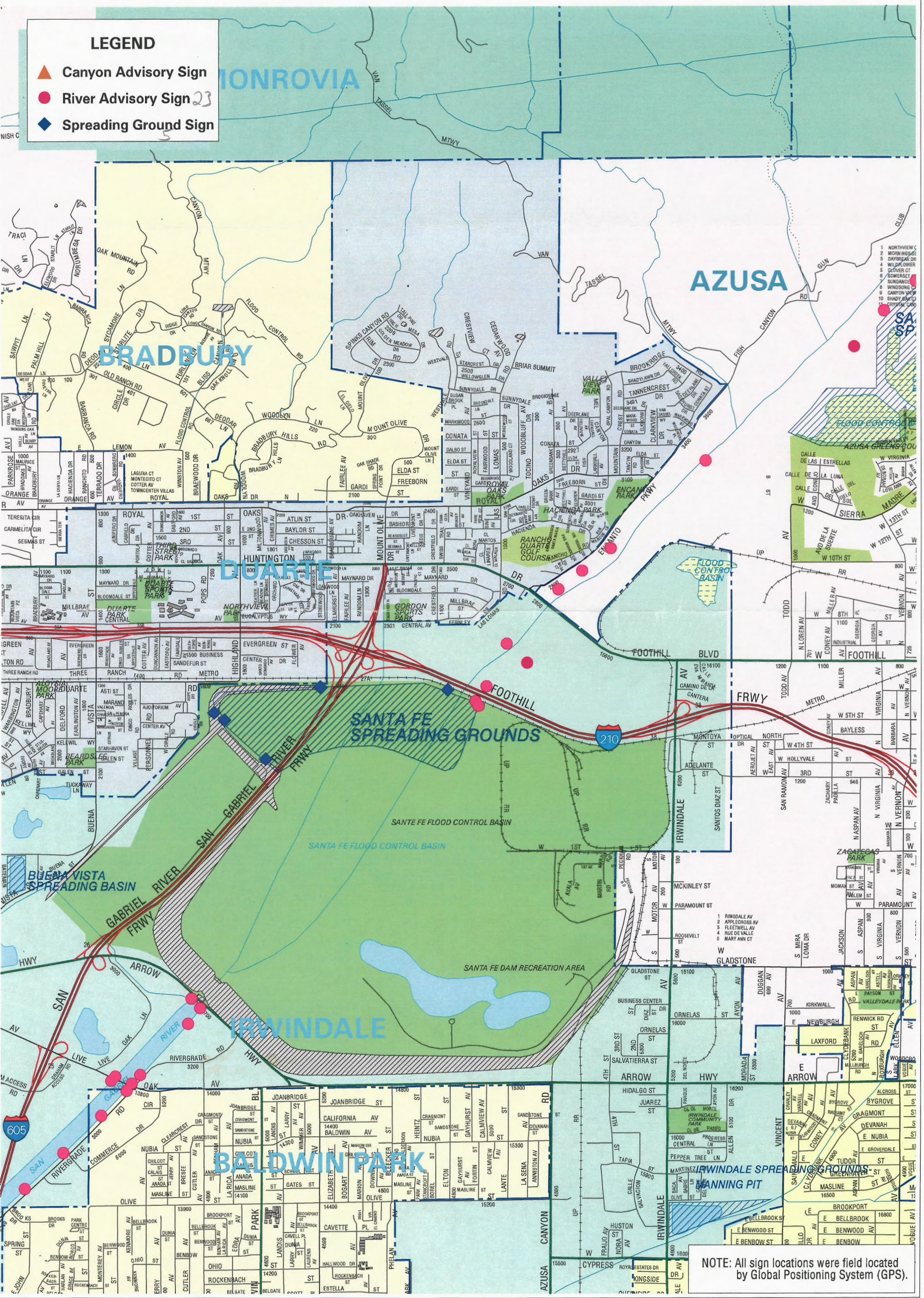
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LEGEND

-  Canyon Advisory Sign
-  River Advisory Sign
-  Spreading Ground Sign



NOTE: All sign locations were field located by Global Positioning System (GPS).

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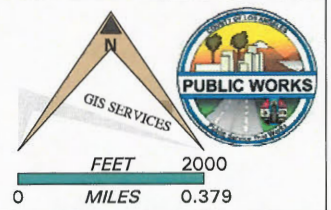
AB2023 LIABILITY COMPLIANCE PLAN

ADVISORY SIGN LOCATION MAP

FOR UNLINED CHANNELS AND ADJACENT SPREADING FACILITIES

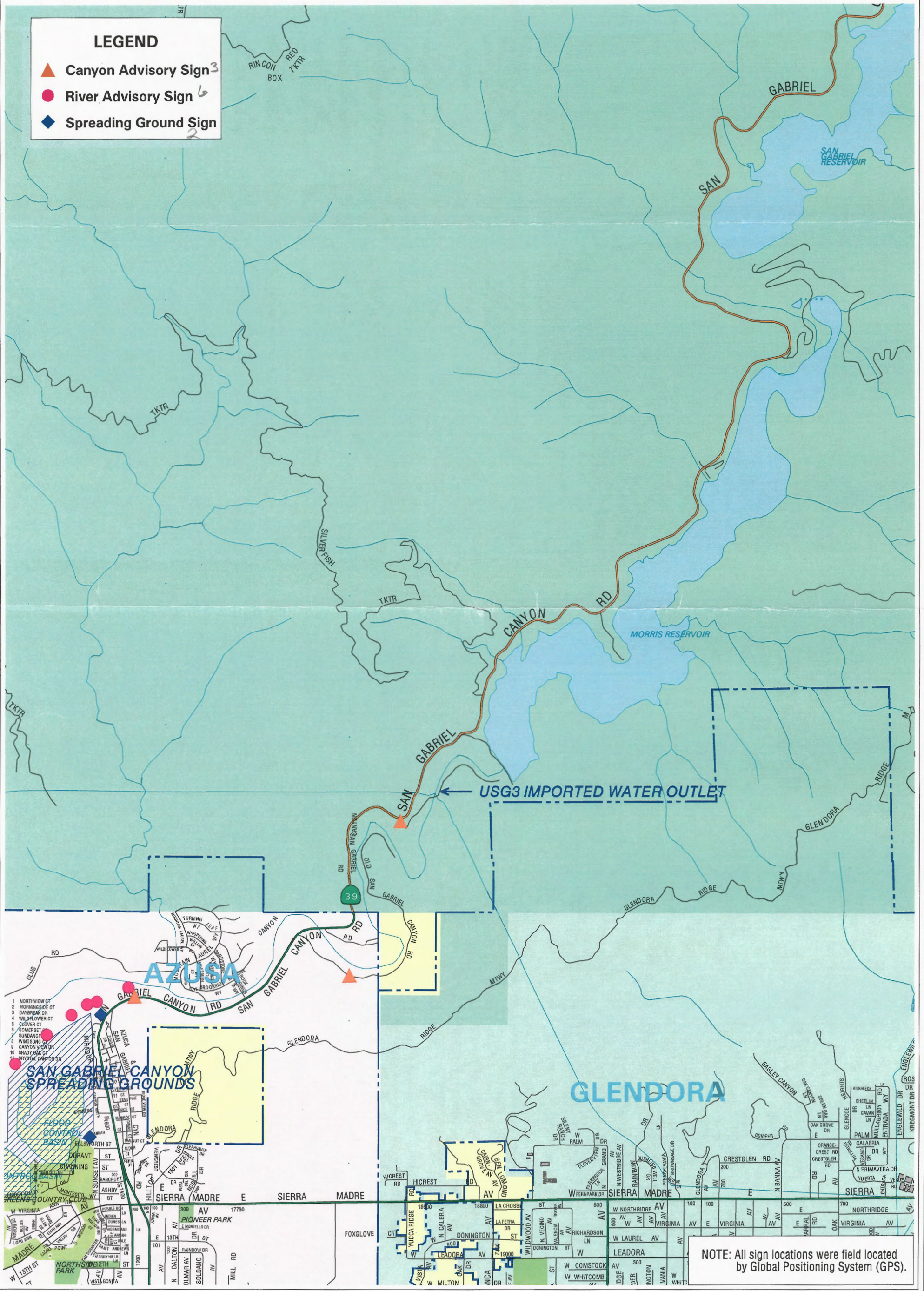
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LEGEND

- ▲ Canyon Advisory Sign³
- River Advisory Sign⁶
- ◆ Spreading Ground Sign²



- 1 NORTHVIEW CT
- 2 MORNINGSIDE CT
- 3 DAYBREAK DR
- 4 WILDFLOWER CT
- 5 COVER CT
- 6 SOMERSET
- 7 SUNDANCE
- 8 WINDSONG CT
- 9 CANYON VIEW DR
- 10 SILENT RISE CT
- 11 CRYSTAL CANYON DR

NOTE: All sign locations were field located by Global Positioning System (GPS).

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