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**San Francisco Bay Regional Water Quality Control Board**

*Sent via electronic mail: No hard copy to follow*

April 7, 2015  
CIWQS Place No. 757384 (SG)

San Francisco Creek Joint Powers Authority  
615 B Menlo Avenue  
Menlo Park, CA 94025

Attention: Len Materman  
Email: [Len@sfcjpa.org](mailto:Len@sfcjpa.org)

**Subject: Conditional Water Quality Certification for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, Cities of Palo Alto and East Palo Alto, Santa Clara and San Mateo Counties**

Dear Mr. Materman:

Regional Water Board staff has reviewed the application materials submitted by the San Francisquito Creek Joint Powers Authority (JPA) for the proposed San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project (Project) located in Santa Clara and San Mateo counties. The Santa Clara Valley Water District (District) is the Project's local sponsor. The JPA has applied to the U.S. Army Corps of Engineers (Corps) Regulatory Branch for an Individual Permit to: (1) discharge dredge and fill materials to waters of the United States pursuant to section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344); and (2) place structures and work in navigable waters pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 320.2). We have determined that the Project, as proposed, will not violate State water quality standards and accordingly issue a conditional CWA section 401 water quality certification (Certification) for the Project.

The JPA submitted a certification application for the Project dated March 12, 2013. On February 27, 2014, the Regional Water Board denied the application without prejudice based on insufficient information on which to issue certification. The JPA resubmitted the application on July 31, 2014. The Regional Water Board issued a second incomplete application letter requesting additional information on August 29, 2014. The JPA provided supplemental information, which was received October 10 and October 17, 2014, upon which the Regional Water Board determined the application to be complete. All referenced materials submitted by the JPA are collectively referred to as the Application.

As of the date of this Certification, aspects of the Project remain under discussion with other government agencies, and, as such, the Project design may be subject to change. Also as a result, the JPA has in some cases submitted application information that is not final or has not yet submitted information necessary for the Regional Water Board to accept final plans (e.g., for mitigation for impacts to creeks and wetlands, coffer dam construction and removal, creek dewatering, groundwater

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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management, utility line construction and abandonment, placement and stabilization of fill in levees and on wetlands, beneficial reuse of excavated sediment, and disposal of excess sediment/cut). Where that is the case, this Certification requires submittal of final plans, acceptable to the Regional Water Board Executive Officer (Executive Officer), prior to commencement of Project construction or commencement of construction for the relevant Project component.

### **A. Project Location and Site Description**

The Project is located on San Francisquito Creek (Creek) along a 1.5-mile stretch of the Creek from San Francisco Bay to East Bayshore Road, a frontage road to U.S. Highway 101. This stretch of the Creek is a managed earthen flood control channel. The Project is designed to increase the flow conveyance capacity of the creek channel for a combination of the 100-year flow event, the 100-year high tide event, and 26 inches of sea level rise.

This stretch of the Creek is on the boundary between Santa Clara and San Mateo counties. The Project area is divided into three reaches. A reach is a continuous part of the Creek between two specified points. The lower reach is from San Francisco Bay to Friendship Bridge, the middle reach from Friendship Bridge to Daphne Way, and the upper reach from Daphne Way to East Bayshore Road. This Certification refers to the Project area south of the creek channel centerline as the “south bank” and the area north of the creek channel centerline as the “north bank.” The JPA refers to these areas as left and right banks, respectively, in its design plans and other documents. From the JPA naming scheme, the station numbers along the Creek and levees are labeled “L-line” for station locations south of the creek channel, “R-line” for station locations north of the creek channel, and “C-line” for the creek channel centerline stations.

The City of Palo Alto, within Santa Clara County, borders the south bank in all three reaches. The Palo Alto Municipal Golf Course borders the majority of the south bank, with the Palo Alto airport bordering a 600-foot stretch of the eastern-most section of the south bank. The north bank of the Project area is bordered by San Mateo County, with the Faber Tract Marsh in the lower reach and the City of East Palo Alto in the middle and upper reach borders.

The Creek provides important migration, spawning, and juvenile rearing habitat for winter-run steelhead. In addition, green sturgeon and longfin smelt are known to inhabit the South Bay and its tidally-influenced tributaries. The Faber Tract and the Laumeister Tract (north of the Faber Tract) provide ideal habitat for special status species including Ridgway’s (formerly California clapper) rail, black rail, salt marsh harvest mouse, and salt marsh wandering shrew. Additionally, suitable habitat occurs along the creek channel, and these species have the potential to occur in the Project area.

### **B. Project Purpose**

The purpose of the Project is to improve the Creek’s channel capacity to accommodate the 100-year flood flow event for Creek flows coupled with the influence of San Francisco Bay tides, including projected sea level rise, from the downstream face of East Bayshore Road down to the Bay. It would reduce local fluvial flood risks in the Project area during storm events, provide the capacity needed for future upstream improvements, and increase and improve ecological habitat and recreational opportunities.

### **C. Project Description**

The JPA proposes to increase the Creek’s flood flow capacity to contain the one percent flood flow event through the following activities:

1. **Excavate in-channel sediments:** About 175,890 cubic yards of sediment will be removed from along 5,775 linear feet of the creek channel and associated channel expansion area to increase creek capacity and to maximize conveyance. In-channel sediment will not be reused because it is unlikely to provide suitable material for levee embankment use.
2. **Rebuild and relocate levees:** The JPA will widen the creek channel by rebuilding the East Palo Alto Levee (Northern Levee) and relocating the Palo Alto Levee/Palo Alto Municipal Golf Course Levee (Southern Levee), which will reduce tidal influences in the Creek and increase channel capacity.
  - a. Northern Levee: About 3,296 linear feet (station (STA) 30+00 to STA 55+00) of the levee will be raised to increase channel capacity. As shown in the draft 100 percent design plans, sheets X-7 through X-14, the elevation increase varies by up to 4 feet based on existing conditions and the necessary modifications along the levee. Approximately 55,000 cubic yards of fill will be used to increase the height of the levee.
  - b. Southern Levee: About 2,728 linear feet (STA 23+00 to STA 54+00) will be relocated up to approximately 200 feet into the Palo Alto Municipal Golf Course and raised to increase channel capacity. The elevation increase varies by up to 4 feet based on existing conditions and the necessary modifications at each station as shown in sheets X-6 through X-14 in the draft 100 percent design plans. Approximately 84,700 cubic yards of fill will be used for the levee relocation.
3. **Construct levee maintenance roads:** The JPA will build about 10,176 linear feet of maintenance roads on the newly raised and relocated levees. The maintenance roads will also serve as pedestrian/bicycle trails. The roads will be up to 16 feet wide and paved with crushed granite, except for a section on the south bank from stations L-line 28+00 through 54+00 that will be paved with asphalt as part of the Bay Trail. The Bay Trail section will have up to 41,600 square feet of asphalt (2,600 linear feet, up to 16 feet wide), as shown in sheet G-3 in the Application's supplemental figures. This Certification requires the JPA to submit a Post-Construction Stormwater Management Plan to describe how stormwater runoff from the paved Bay Trail surface will be diverted away from the Creek and other waters of the State, consistent with the Regional Water Board's Municipal Regional Stormwater Permit (NPDES Permit No. CAS612008; Order No. R2-2009-0074, as amended by Order No. R2-2011-0083, and as may be subsequently amended or reissued) requirements for post-construction stormwater management for new or replacement impervious surfaces.
4. **Raise and grade the Faber Tract Levee:** The JPA will raise and grade a portion of the currently unmaintained levee between the Creek and the Faber Tract (Faber Tract Levee) closer to its original design elevation to stabilize the levee. The new levee design will allow the Creek to periodically flood the marsh to mimic the current discharge pattern.

Fill will be added to the Faber Tract Levee along 350 linear feet (0.77 acres) (STA 21+00 to STA 24+00) to reduce concerns regarding levee erosion and the potential for mass wasting leading to levee failure. In addition, the JPA will raise the lowest levee crest elevation downstream of the Friendship Bridge from a minimum elevation of 11 feet to 13 feet and incorporate a 6H:1V levee side slope on the side sloping into the Faber Tract. The 6H:1V levee side slope will help protect the levee toe from potential erosion due to flow overtopping along a 400 foot distance as the levee transitions upstream to a higher elevation closer to the Friendship Bridge. The new area of impact from the existing levee toe to the proposed levee toe is approximately 0.42 acres (18,383 square

feet). Approximately 12,000 cubic yards of clean imported fill will be used to increase the height of the levee.

5. **Degrade Bay Levee:** The JPA will degrade a section of the levee north of the Creek and east of the Faber Tract (Bay Levee) to restore the Creek-Bay interface in the marsh area east of the Faber Tract and to reduce water surface elevations in the Creek between Friendship Bridge and the Bay. About 2,820 cubic yards of sediment/soil will be removed along 600 linear feet (0.73 acres) of the Bay Levee (STA 3+50 to 9+50) downstream of the Faber Tract in a marsh area that is already subject to daily tides from the Bay. This will further connect the marsh to the Creek, allow the channel to expand out over the marsh area at a point further upstream than under existing conditions, and decrease the water surface elevation during large flood events.
6. **Construct floodwalls:** The JPA will construct floodwalls in the upper reach to increase capacity and maintain consistency with the California Department of Transportation's (Caltrans) enlargement of the U.S. 101/East Bayshore Road Bridge over the Creek (Caltrans facility) as follows:
  - a. East Palo Alto Floodwall: Concrete floodwalls up to 4 feet above top of bank (up to 13 feet from channel bottom) will be constructed along approximately 2,350 linear feet (STA 52+00 to STA 77+50) of the Northern Levee; and
  - b. Palo Alto Floodwall: Concrete floodwalls up to 4 feet above top of bank (up to 13 feet from channel bottom) will be constructed along approximately 2,879 linear feet (STA 51+00 to STA 77+50) of the Southern Levee.
7. **Install rock slope protection:** The JPA will install approximately 4,735 linear feet (5.86 acres) of rock-slope levee protection (RSP) at various locations along the length of the Project to protect the levee against erosion and to stabilize the floodwalls. The RSP on the levees will be installed from the toe of the levee up the bank approximately 10 to 15 feet.
8. **Construct Friendship Bridge boardwalk extension:** The JPA will construct a boardwalk extension to the Friendship Bridge. The existing Friendship Bridge will be retained and a 202-linear foot boardwalk will be constructed from the retained eastern footing of the bridge and across the newly-expanded Creek to connect with the realigned Southern Levee. The boardwalk will be the same width as the Friendship Bridge (140 feet long and 10 feet wide), constructed of timber deck and concrete piles, and require twenty 18-inch diameter concrete piles. The elevation of the low mark of the boardwalk will be set above the highest anticipated flood elevation, with the lowest point of the bridge a minimum of 5 feet above the marsh plain terrace beneath it. This Certification contains a condition prohibiting the use of chemically-treated wood on top of and inboard of the levees (i.e., in a location where it could discharge to State waters or otherwise impact beneficial uses, which are discussed in Finding D below), which applies to the boardwalk extension.
9. **Relocate portion of channel:** About 1,100 linear feet of the channel (C-line stations 43+00 to 54+00, as shown in the draft 100 percent design plans, will be relocated up to 80 feet to the east due to its existing close proximity to the proposed inboard levee toe. The final low flow channel alignment will be roughly equidistant between the Northern Levee and the new Southern Levee location and will have the same elevation as the existing channel elevation.

10. **Relocate or remove utilities:** The JPA will remove, abandon, or replace several utility components for electricity, gas, water, sanitary sewer, and stormwater runoff present within the Project right-of-way. This Certification requires, prior to the beginning of work, the JPA to prepare and submit an acceptable utility relocation plan that identifies, for example, appropriate measures to prevent impacts during horizontal directional drilling, proposed disposal locations or methods for excess sediment, elevations of live and abandoned utilities, and related information. In addition, the plan shall document the locations of any utilities abandoned in place.

- a. Electricity and gas systems. The JPA will coordinate with Pacific Gas and Electric (PG&E) to perform the following electricity and gas transmission system work before creek channel and levee construction work begins:
  - i. *Electricity transmission system.* PG&E will realign the existing electricity transmission system that currently crosses over the Creek from L-line STA 52+00 (south bank) to R-line STA 48+00 (north bank). The new line will be shifted 250 feet south and cross over the Creek at L-line STA 51+00 (south bank) to R-line STA 52+00 on the north bank. The Project will include removing a pole from both banks; replacing two existing poles, one on each bank; and adding two new poles on the north bank for the new line. In addition, PG&E will remove wires from six poles that run north to south along the far north bank right-of-way between R-line STA 30+00 to STA 56+00. Of these six poles, one will be raised by 15 feet. The realigned section will connect to the southern-most pole in this series. Any replacement poles will be made of light-duty steel.

PG&E will replace the foundation of an existing electric transmission tower located in the floodplain of the future channel alignment footprint at STA R-48+00, approximately 2,000 feet upstream of the Friendship Bridge. PG&E will demolish the existing foundation, build a temporary shoo-fly support, and build a permanent concrete foundation at the existing foundation site. The electricity tower on the old foundation will be lifted and placed onto the permanent concrete foundation with an area of 625 square feet. An access ramp will be built on the inboard side of the levee for this tower. This Certification includes a condition for the JPA to submit a utility plan that shall include elevations for all the new utilities.

- ii. *Gas transmission system.* PG&E will abandon in place 3,000 linear feet of the gas transmission line located in the Project right-of-way, of which about 1,350 linear feet is in the new channel realignment footprint. PG&E estimates that the old line is 4.7 feet below grade beneath the creek channel and will confirm the elevation during excavation activities. This Certification includes a condition requiring the JPA to remove the section of the existing gas transmission pipeline extending beneath the creek channel, floodplain, and levees, which is approximately 1,350 linear feet from the inboard top-of-bank of the Southern Levee to the inboard top-of-bank of the Northern Levee.

The new gas line will be aligned south to north in the golf course, then will cross east to west through the Project right-of-way upstream of the Friendship Bridge from L-line STA 32+00 (south bank) to R-line STA 34+00 (north bank), and will extend west to a connection in East Palo Alto. The pipeline tunnel under the Creek will be bored by horizontal direction drilling at 25 feet below ground. The other portions of the pipeline will be installed by cut and fill at a minimum of 4 feet below ground surface.

PG&E will place three trench spoils piles equidistant from south to north along the south bank. Each pile is planned to be 100 feet by 100 feet. On the north bank, PG&E will place

another 100 foot by 100 foot spoils pile next to the borehole site. The suitability of the spoils for reuse to cover the new pipeline will be determined after they are appropriately assessed during the utility activities, and any unused spoils will be hauled from the site and appropriately disposed of at an approved upland facility.

- b. Sanitary sewer. The JPA will realign a sanitary sewer line that currently crosses the Creek at the Friendship Bridge. As proposed, this task will involve open trenching with a minimum depth below ground surface of 3.5 feet for the new line. The sanitary sewer line would be encased in armored steel where it crosses the Creek. The new alignment will cross the creek at L-line STA 27+50 (south bank) through the channel at C-line STA 29+90 to R-line STA 27+60 (north bank). This work would be concurrent with the levee construction work so will not have separate impacts to waters of the State. The JPA will remove about 960 linear feet of existing sanitary sewer line. This Certification includes a condition requiring the JPA to submit information demonstrating that the line cannot be constructed at a deeper depth below the creek channel bottom or otherwise that there is not a reasonably foreseeable chance that the line could constrain the creek channel in the future.
- c. Storm drains and stormwater outfall. The JPA will remove various storm drain pipelines existing within the golf course that will be under the future Southern Levee and widened creek channel post project. This work will be concurrent with the levee and channel work so will not have separate impacts to waters of the State. Caltrans plans to remove an abandoned 96-inch stormwater outlet within the Project area adjacent to the east border of the Project area (east of STA L-76; sheet C-47), as shown in the 100 percent design plans, sheet C-47, before the JPA begins Southern Levee construction activities.

11. **Dewatering:** The full length of the Project from Highway 101 to the mouth of the creek will be dewatered as discussed in the JPA's *Temporary Dewatering Plan* (October 14, 2014 draft). The Regional Water Board requires a Dewatering Plan to address diversion of surface water and management of groundwater seepage in construction areas.

The Dewatering Plan states that at the end of each construction season, the JPA will remove all cofferdams, re-water the dewatered creek areas, and restore the creek habitat. The JPA will implement best management practices (BMPs) to avoid and minimize impacts to water quality and will analyze and monitor the water being returned to the creek channel to ensure the effectiveness of the BMPs.

This Certification includes a condition requiring the JPA to revise the Dewatering Plan to address both surface water and groundwater management to ensure the proposed discharges meet applicable water quality objectives. The revised Dewatering Plan shall include a Surface Water Diversion Plan that describes, for example, the JPA's procedures for placing and removing coffer dams with minimal impacts to the Creek. The revised Dewatering Plan shall also include a Groundwater Management Plan that describes the BMPs that will be implemented to ensure groundwater flows are appropriately pumped, contained, and analyzed such that they meet applicable water quality objectives before discharging the flow back into the Creek downstream of the lower coffer dam.

12. **Sediment disposal and fill import:** The JPA plans to excavate about 175,890 cubic yards of fill or sediment during the levee modification and channel widening activities. About 20 percent of this sediment will be hauled offsite. The JPA anticipates placing the other 80 percent of sediment in the adjacent golf course for use in a future golf course reconfiguration project being managed by the

City of Palo Alto. About 190,800 cubic yards of fill will be imported for use in raising levee elevations.

This Certification contains a condition for the JPA to characterize any sediment being hauled out of the Project area to determine the appropriately-permitted upland location for disposal or to determine if the sediment may be beneficially-reused for the Project or at another location. In addition, this Certification includes a condition for the JPA to characterize all imported fill material being used in the Project in accordance with the Dredged Material Management Office guidance document *Guidelines for Implementing the Inland Testing Manual in the San Francisco Bay Region* (Corps Public Notice 01-01, or most current version) and the Regional Water Board May 2000 staff report, *Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines*, or the most current revised version.

13. **Disposal of materials other than sediment or soil:** This Certification includes a condition for the JPA to dispose of any other waste materials in an appropriately-permitted upland location. This applies to materials such as, but not limited to, wooden utility poles, electric wires, and other utility components removed from the Project area.
14. **Staging, access, and haul routes:** The Project's staging, access, and haul routes are designated based on work on the north or south banks as follows:
  - a. **North Bank**
    - i. Site access and a construction staging area will be located at the end of O'Connor Street near the intersection with Daisy Lane in East Palo Alto. The haul route will be along O'Connor Street to Pulgas Avenue, East Bayshore Road, and Embarcadero Road to U.S. 101. This is the designated route for large vehicles, including dump trucks and flatbed trucks, in the City of East Palo Alto.
    - ii. Site access and a construction staging area will be located at the end of Daphne Way at Jasmine Way in East Palo Alto. The haul route will be along Jasmine Way to Camelia Drive, Pulgas Avenue, East Bayshore Road, and Embarcadero Road to U.S. 101. Large vehicles, including but not limited to dump trucks and flatbed trucks, will be prohibited on Daphne Way and Jasmine Way. Further vehicle restrictions on Daphne Way and Jasmine Way may be required by the City of East Palo Alto and will be determined during development of the Project Traffic Plan.
    - iii. Site access and a construction staging area will be located at the end of Verbena Drive at Abelia Way. The haul route will be along Verbena Drive to Camelia Drive, Pulgas Avenue, East Bayshore Road, and Embarcadero Road to U.S. 101. Large vehicles, including but not limited to dump trucks and flatbed trucks, will be prohibited on Verbena Drive and Camelia Drive. Further vehicle restrictions on Verbena Drive and Camelia Drive may be required by the City of East Palo Alto and will be determined during development of the Project Traffic Plan.
  - b. **South Bank**
    - i. Site access will be at the Palo Alto Pump Station, accessed from East Bayshore Road. The haul route will be along East Bayshore Road to Embarcadero Road and U.S. 101.
    - ii. Site access will be at Geng Road between the Baylands Athletic Center and the Golf Course. The haul route will be along Geng Road to Embarcadero Road and U.S. 101.

## D. Impacts

The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) defines the beneficial uses of waters of the State. The Project will impact the Creek. The Basin Plan assigns the following beneficial uses to the Creek: Cold Freshwater Habitat (COLD), Fish Migration (MIGR), Fish Spawning (SPWN), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), Water Contact Recreation (REC-1), and Noncontact Water Recreation (REC-2).

The Project will permanently fill 9.41 acres and temporarily disturb approximately 3.86 acres of waters of the State due to Project activities. These estimated Project impacts are itemized by habitat type in Table 1 below. This Certification includes a condition requiring the JPA to prepare a final mitigation and monitoring plan (MMP) that describes how the JPA will mitigate for permanent and temporary Project impacts.

**Table 1 - Impacted Areas by Habitat Type**

Habitats	Purpose of Impact	Permanent Impacts (acres)		Temporary Impacts (acres)		Total (acres)
		Area	Subtotal	Area	Subtotal	
<b>Diked Marsh</b>	South levee alignment; channel widening	2.86	2.88	0.02	0.21	<b>3.09</b>
	North side loss at base of improved levee	0.02		0.19		
<b>Freshwater Pond</b>	South levee construction; channel realignment	1.13	1.13			<b>1.13</b>
<b>Freshwater Marsh</b>	South levee construction; channel realignment	0.33	0.33			<b>0.33</b>
<b>Tidal Salt Marsh</b>	Sediment removal in creek channel	2.82	3.18	0.84	1.33	<b>4.51</b>
	Fill in low spot in Faber Tract Levee	0.35		0.16		
	Bay Levee degradation	0.01		0.33		
<b>Tidal Channel/ Bay Waters</b>	Channel realignment	0.9	0.9	2.32	2.32	<b>3.12</b>
<b>Riparian</b>	Channel widening; marsh plain creation	0.5	0.5			<b>0.5</b>
<b>Rock Slope Protection</b>	Project-wide stability for floodwalls, levees, and banks	0.49	0.49			<b>0.49</b>
<b>TOTAL</b>			<b>9.41</b>		<b>3.86</b>	<b>13.27</b>

The following list shows the linear feet of impacts from Project activities, where (P) is for permanent impact and (T) is for temporary impact:

- 5,775 linear feet of sediment excavation (T)
- 3,296 linear feet of Northern Levee (P)
- 2,728 linear feet of Southern Levee (P)
- 350 linear feet of Faber Tract Levee (P)
- 600 linear feet of Bay Levee (P)
- 1,100 linear feet of tidal channel relocation (P)



- 543 linear feet of rock slope protection (P)

### **E. Mitigation**

This Certification requires the JPA to restore permanently-affected riparian and wetland/marsh habitat and other waters of the State onsite at a minimum mitigation-to-effect ratio of 2:1 and to restore temporarily-affected habitat at a minimum mitigation-to-effect ratio of 1:1 to ensure the Project results in no net loss and a long-term net gain in wetland area, function, and value. The ratio of 2:1 for permanent impacts and 1:1 for temporary impacts will apply as long as onsite construction of a mitigation activity is completed within 12 months of the date when the associated impact first occurs. This Certification requires the JPA to complete an additional 10 percent mitigation per year, on an areal basis, for the portion of mitigation not completed within the required 12-month period. This Certification includes a condition for the JPA to maintain a schedule to track actual Project activity start dates, and the start dates of impacts to waters of the State and the associated mitigations.

The JPA will mitigate for permanent and temporary Project impacts in accordance with the final MMP. The JPA submitted a draft MMP to the Regional Water Board, the Corps, the California Department of Fish and Wildlife (CDFW), the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) in October 2014.

### **F. Maintenance**

The JPA delegated operations and maintenance within the Project area to the District and the City of East Palo Alto on November 20, 2014 (JPA Resolution 14.11.20). The JPA, in consultation with the District and the cities of East Palo Alto and Palo Alto, is considering also adding the City of Palo Alto to the delegation agreement, although the City of Palo Alto is already within the District's jurisdiction. Maintenance will be conducted in accordance with the San Francisquito Creek Flood Reduction, Ecosystems Restoration, and Recreation Project, San Francisco Bay to Highway 101, Operation & Maintenance Manual (October 2014; final document in progress) (O&M Manual) and be consistent with the District's Stream Maintenance Program. The revised O&M Manual shall cover site-specific work requirements within the Project area such as vegetation management; and repair of animal damage to levees, erosion sites, flood damage, and access and maintenance roads. This Certification includes a condition for the JPA to submit, or cause the operations and maintenance-delegated entities to submit, a revised O&M Manual.

### **G. California Environmental Quality Act Compliance**

On October 25, 2012, the JPA, as lead agency, certified an Environmental Impact Report (EIR) for the Project in accordance with the California Environmental Quality Act (CEQA) (JPA Resolution Number 12-10-25A). The JPA submitted an endorsed Notice of Determination, dated July 25, 2013, indicating that the JPA would carry out or approve the Project (JPA Resolution Number 13-07-25) in compliance with CEQA (Project State Clearinghouse Number 2010092048). The Regional Water Board, as a responsible agency under CEQA, has considered the EIR and finds that it appropriately addressed the Project's reasonably foreseeable potential environmental impacts.

### **H. EcoAtlas**

It has been determined through regional, State, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the State's Wetlands Conservation Policy of no net loss to wetlands, the State needs to closely track both wetland losses and

mitigation/restoration project success. Therefore, this Certification requires that the JPA use the California Wetlands Form to provide Project information related to impacts and mitigation/restoration measures. An electronic copy of the form and instructions can be downloaded at:

<http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml>. Project information concerning impacts and mitigation/restoration will be made available at the web link:  
<http://www.ecoatlas.org/regions/ecoregion/bay-delta/projects>.

**Certification and General Waste Discharge Requirements:** I hereby issue an order certifying that any discharge from the Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this Certification. The following conditions are associated with this Certification:

1. The JPA shall construct the Project in conformance with the Project description provided in the Application. Any changes to Project design must receive Executive Officer approval before the changes are implemented.
2. All technical reports, plans, and related information required by this Certification shall be submitted acceptable to the Executive Officer. Any changes to plans accepted by the Executive Officer must be accepted in writing prior to implementation of the change(s).
3. Construction shall not commence on any phase of the Project until all required documents, reports, plans, and studies required in this Certification associated with that phase of the Project have been submitted to the Executive Officer or the Regional Water Board and found acceptable by the Executive Officer or the Regional Water Board.
4. During construction activities, the JPA shall minimize disturbance or removal of vegetation in accordance with the Application's Box 16: Avoidance of Impacts. The JPA shall stabilize the Project area by incorporating appropriate BMPs, including the successful reestablishment of native vegetation, to enhance wildlife habitat values and to prevent and control erosion and sedimentation.
5. No debris, soil, chemically-treated wood, cement, concrete, or washings thereof, oil or other petroleum products, or any other unauthorized construction related materials or wastes shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, the JPA shall remove any excess material from the work area and any areas adjacent to the work area where such material may be washed into waters of the State.
6. The use of chemically-treated wood on or anywhere between the Project's levees, such as for boardwalks, utility line supports, and signposts, is prohibited, unless the JPA submits a report acceptable to the Executive Officer prior to such use demonstrating that no feasible alternative exists. Additionally, to avoid the leaching of copper and other chemicals toxic to aquatic species into the water column and sediment, only piles consisting of inert materials shall be installed. These materials may include steel, concrete, untreated wood, composite, or reinforced plastic. The use of marine paints containing copper and/or tributyltin is prohibited, without exception.

7. The JPA shall not operate any equipment in stream channels or other waters where there is flowing or standing water. No fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where an accidental discharge to waters of the State may occur.
8. All work performed within waters of the State shall be completed in a manner that minimizes impacts to water quality, beneficial uses, and wetland and riparian habitat along the Creek and the Bay.
9. This Certification does not allow for the take, or incidental take, of any special status species. The JPA shall use the protocols specified by CDFW, USFWS, NMFS, and the Corps to ensure that Project activities do not impact the beneficial uses of COLD, MIGR, WARM, WILD, and the Preservation of Rare and Endangered Species.
10. The JPA shall adhere to the Terms and Conditions and the Reasonable and Prudent Measures in the most current *Endangered Species Consultation* issued for the Project by NMFS and the *Conservation Recommendations in the Essential Fish Habitat Consultation* also issued for the Project by NMFS.
11. The JPA shall adhere to the Terms and Conditions and the Reasonable and Prudent Measures in the most current *Biological Opinion* issued for the Project by USFWS.
12. Project construction activities shall be restricted to the time periods during the year and conditions allowed by the Corps, BCDC, USFWS, NMFS, and CDFW as specified in their permits, biological opinions, and agreements. Temporary extensions of the specified work periods may be granted upon receipt of written authorization from the applicable agencies and the Executive Officer.
13. Concrete used in the Project shall be allowed to completely cure (a minimum of 28 days) or be treated with a CDFW-approved sealant before it comes into contact with flowing water.
14. **Dewatering Plan.** Not later than 30 days prior to the commencement of dewatering activities, as discussed in Finding C.11, the JPA shall submit and implement a Dewatering Plan acceptable to the Executive Officer. The Dewatering Plan shall describe how the JPA will implement dewatering and rewatering activities for each creek reach in a manner that will be protective of the Creek's water quality and beneficial uses and will avoid exceedances of the applicable receiving water quality objectives including, but not limited to, turbidity, pH, temperature, dissolved sulfide, and dissolved oxygen. The Dewatering Plan shall include plans (i.e., diagrams or drawings; maps showing locations of activities and structure; and other design details as appropriate) for and appropriate discussion of all dewatering system components, such as diversion pipes, water storage, water quality monitoring, and discharge methods. In addition, the Dewatering Plan shall identify an appropriate discharge point for the proposed dewatering flows downstream of the lower coffer dam. The Dewatering Plan shall include, at a minimum, the following specific plans:
  - a. *Surface Water Management Plan.* The JPA shall prepare and implement a Surface Water Diversion Plan as part of the Dewatering Plan. In addition to the general dewatering requirements discussed above, the Surface Water Diversion Plan shall include:
    - i. procedures and methods for maintaining natural flow upstream and downstream of the Project area; for avoiding and preventing sedimentation and erosion upstream or downstream of the Project area; and for achieving discharge and receiving water quality objectives;

- ii. methods for installing, maintaining, inspecting, and removing coffer dams with minimal or no impacts to the Creek. In addition, the plan shall describe how the Creek will be restored when coffer dams are removed after each construction season; and
  - iii. procedures for diverting the flow from two municipal storm drain pump stations that normally discharge into the Project area.
- b. *Groundwater Management Plan.* The JPA shall prepare and implement a Groundwater Management Plan as part of the Dewatering Plan. At a minimum, the Groundwater Management Plan shall include detailed descriptions of the procedures for pumping, diverting, containing, and analyzing groundwater that upwells from trenching and other grading and excavation activities. In addition, the plan shall include:
- i. a sketch of the approximate excavation and grading locations anticipated to generate groundwater needing to be managed during the construction activity;
  - ii. the purpose of each excavation activity where groundwater will be managed;
  - iii. anticipated depth and length of each excavation area;
  - iv. plans for containing and monitoring groundwater flow before discharging it to the Creek downstream of the lower coffer dam; and
  - v. identification of an appropriate discharge point for the proposed dewatering flows downstream of the lower coffer dam.
15. Creek dewatering discharges, accumulated groundwater or stormwater removed during dewatering of excavations, and diverted creek and stormwater flows shall not be discharged to waters of the State without meeting the following discharge and receiving water limitations:
- a. Discharge pH - the instantaneous discharge pH shall be in the range of 6.5 to 8.5 and shall not vary from ambient pH by more than 0.5 pH units.
  - b. Discharge Dissolved Oxygen - the discharge dissolved oxygen concentration shall be no less than 5.0 milligrams per liter (mg/L) as an hourly average for discharging into tidal water and 7.0 mg/L (hourly average) for discharging into non-tidal receiving waters.
  - c. Discharge Dissolved Sulfide shall not be greater than 0.1 mg/L.
  - d. Receiving Water Turbidity - the receiving water turbidity measured as nephelometric turbidity units (NTU) shall not be greater than 10 percent of natural conditions in areas where natural turbidity is greater than 50 NTU (daily average). All Project discharge plans shall identify an acceptable location or locations at which to measure background turbidity. The JPA shall monitor receiving water and discharge turbidity at least one time every 8 hours on days when discharges from excavations or any other dewatering processes may occur.
  - e. Nutrients - the receiving waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.
  - f. There shall be no violation of any water quality standard for receiving waters adopted by the Regional Water Board or the State Water Resources Control Board.

16. No later than 60 days before the beginning of work, the JPA shall prepare and submit a utility relocation plan, acceptable to the Executive Officer, that identifies, at a minimum, appropriate measures to prevent impacts during horizontal directional drilling, elevations of live and abandoned utilities, proposed disposal locations or methods for excess sediment, proposed sediment reuse, and related information. In addition, the plan shall document the locations of any utilities abandoned in place.
17. No later than 60 days prior to commencing any drilling activity, the JPA shall submit boring plans acceptable to the Executive Officer. At a minimum, the boring plans shall include: a sketch of the approximate locations of drill entry and exit points; the proposed depth of bore(s) and a description of streambed conditions that supports the proposed depth of the bore; the approximate length of the proposed bores; type and size of boring equipment to be used; the estimated time to complete the bore; a list of lubricants and muds to be used; the name of the contractor and cell phone numbers of its construction supervisor and monitor; name of the environmental and biological monitor; site-specific monitoring conditions; monitoring protocols; and a containment and cleanup plan in the event of a discharge of drilling muds or other materials to a receiving water or to a location where they could be discharged to a receiving water.
  - a. The JPA shall monitor drill mud pressure and volume at all times during drilling to ensure that hydrofracture or other loss of drill muds has not occurred. In the event of a sudden loss in pressure or volume, the JPA shall take appropriate steps, including immediately halting the drilling operation, to ensure that drilling muds are not discharged to waters of the State.
  - b. Drilling within 50 feet of the creek channel shall only be performed when it is possible to visually monitor the creek bed for any indications of hydrofracture within the creek channel. In the event of any visual indication of hydrofracture, the JPA shall take appropriate steps, including immediately halting the drilling operation, to ensure that drilling muds are not discharged to waters of the State.
  - c. All drilling muds, slurries, oils, oil-contaminated water, and other waste materials removed from the bore hole or otherwise used during the Project shall be disposed of at a permitted landfill, another appropriately-permitted site, or at an upland site approved in advance by the Executive Officer.
18. No later than 60 days prior to commencing the proposed relocation of the sanitary sewer line, the JPA shall submit a technical report, acceptable to the Executive Officer, that identifies the depth below the channel at which the sanitary sewer line is to be relocated and demonstrates that the line cannot be constructed at a deeper depth below the creek channel bottom, or otherwise that there is not a reasonably foreseeable chance that the line could constrain the creek channel in the future.
19. No later than 60 days prior to commencing the proposed abandonment of the PG&E gas transmission line the JPA shall submit a technical report, acceptable to the Executive Officer, that includes plans to remove the section of the PG&E gas pipeline to be abandoned that runs beneath the Project's creek channel from the inboard top-of-bank of the Southern Levee to the inboard top-of-bank of the Northern Levee. The JPA shall complete the utility line relocations and removals, or cause them to be completed, consistent with the accepted report.
20. Prior to placing any imported fill material at the Project area, including all placement of fill in areas below the top of bank, on levees, and at any other location where the fill is a discharge to or has the potential to discharge to the Creek or other waters of the State, the JPA shall submit a technical

report, acceptable to the Executive Officer, that the chemical concentrations in the imported fill soil are in compliance with the protocols specified in the following documents:

- a. The Dredged Material Management Office (DMMO) guidance document, *Guidelines for Implementing the Inland Testing Manual in the San Francisco Bay Region* (Corps Public Notice 01-01, or most current version) (Inland Testing Manual) with the exception that the water column bioassay simulating in-bay unconfined aquatic disposal shall be replaced with the modified effluent elutriate test, as described in Appendix B of the Inland Testing Manual, for both water column toxicity and chemistry (DMMO suite of metals only); and,
  - b. The Regional Water Board May 2000 staff report, *Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines*, or the most current revised version. Regional Water Board staff shall review and approve data characterizing the quality of all material proposed for use as fill prior to placement of fill at any of the levee, marsh, or channel areas at the Project site. Modifications to these procedures may be approved on a case-by-case basis, pending the JPA's ability to demonstrate that the imported fill material is unlikely to adversely impact beneficial uses.
21. Prior to reusing any sediment spoils, the JPA shall characterize the material to ensure the chemical concentrations are in compliance with the guidance documents from the DMMO and Regional Water Board discussed in Condition 20. The JPA shall characterize any unused spoils to determine the appropriate disposal of the material at an approved upland facility. The JPA shall maintain hauling receipts for all sediment hauled from the Project area and make them available upon request by the Executive Officer.
22. The JPA shall obtain coverage under and comply with the statewide NPDES General Permit for Discharges of Stormwater Associated with Construction Activity (Order No. DWQ-2009-0009, as amended by Order Nos. 2010-0014-DWQ and 2012-006-DWQ) (Construction Stormwater Permit). As part of its compliance, the JPA shall:
- a. Submit, no later than 30 days before starting Project construction activities, a Storm Water Pollution Prevention Plan (SWPPP), prepared consistent with the requirements of the Construction Stormwater Permit and acceptable to the Executive Officer;
  - b. Stabilize all exposed/disturbed areas within the Project area, including using effective erosion and sediment control BMPs throughout all phases of construction to prevent the discharge of sediment-laden runoff to waters of the State. At no time shall sediment-laden runoff be allowed to enter wetlands or other waters of the State. Erosion and sediment control BMPs shall be monitored before, during, and after each storm event. Repairs and improvements to erosion and sediment control BMPs shall be implemented as necessary to prevent erosion and the discharge of sediment to waters of the State;
  - c. Ensure that, prior to the start of the rainy season, disturbed areas of waters of the State and disturbed areas that drain to waters of the State are protected with correctly installed erosion control BMPs (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw) and are revegetated with propagules (seeds, cuttings, divisions) of locally-collected native plants; and
  - d. Where areas of bare soil are exposed during the rainy season, use silt control measures where silt and/or earthen fill threaten to enter waters of the State. Silt control structures shall be monitored for effectiveness and shall be repaired or replaced as needed. Buildup of soil behind

silt fences shall be removed promptly, and any breaches or undermined areas repaired immediately.

- e. Prepare and implement a spill prevention and control plan to prevent any fuel or other equipment-related materials in the Project area from being discharged into the creek channel.
23. No later than 60 days after receiving all necessary permits, biological opinions, agreements, and other agency approvals from the Corps, USFWS, NMFS, CDFW, the Regional Water Board, and the Bay Conservation and Development Commission (BCDC), the JPA shall submit a final MMP, acceptable to the Executive Officer, that incorporates all modifications to the draft MMP that were necessitated by comments on the October 2014 draft MMP by the Regional Water Board, the Corps, USFWS, NMFS, and CDFW, and by conditions of the Corps, CDFW, the Regional Water Board, and BCDC permits for the Project. In addition, the final MMP shall be submitted not less than 60 days prior to commencement of Project construction.

The JPA shall restore permanently-affected riparian and wetland/marsh habitat and other waters of the State onsite at a minimum mitigation-to-effect ratio of 2:1 and shall restore temporarily-affected habitat at a minimum mitigation-to-effect ratio of 1:1 to ensure the Project results in no net loss and a long-term net gain in wetland area, function, and value. The ratio of 2:1 for permanent impacts and 1:1 for temporary impacts shall apply as long as onsite construction of a mitigation activity is completed within 12 months of the date when the associated impact first occurs. Should completion of mitigation construction be delayed for any reason beyond those deadlines, the JPA shall complete an additional 10 percent mitigation per year, on an areal or linear foot basis, as appropriate, on or adjacent to the Project site, for the portion of mitigation not completed within 12 months of impact occurrence. If additional mitigation on or adjacent to the Project site is not available, the JPA shall propose mitigation at an alternate site, and higher ratios than those prescribed above may apply based on the location, function, and value of the alternate site.

The JPA shall maintain a Mitigation-Impact Calendar to track Project activities including the start dates of impacts to waters of the State and the associated mitigation activities. The JPA shall make the Mitigation-Impact Calendar available for review by the Executive Officer upon request.

Consistent with the California Wetlands Conservation Policy, the Executive Officer shall require amounts of mitigation greater than the 10 percent per year addition as the mitigation is further offsite or out-of-kind relative to Project impacts. The additional mitigation shall be proposed, acceptable to the Executive Officer, as part of a revised MMP. As of the date of this Certification, Table 2 lists the minimum required amounts of mitigation for proposed Project impacts:

**Table 2 - Minimum Mitigation Area Required Based on Impacts<sup>[1]</sup>**

Habitat Type	Permanent Impacts		Temporary Impacts	
	Area (acres)	Mitigation Area Required	Area (acres)	Mitigation Area Required
Diked Marsh	2.88	5.76	0.21	0.21
Freshwater Pond	1.13	2.26		
Freshwater Marsh	0.33	0.66		
Tidal Salt Marsh	3.18	6.36	1.33	1.33
Tidal Channel/ Bay Waters	0.9	1.8	2.32	2.32
Riparian	0.5	1.0		

<b>Rock Slope Protection</b>	0.49	0.98		
<b>TOTAL</b>	<b>9.41</b>	<b>18.82</b>	<b>3.86</b>	<b>3.86</b>

Notes:

<sup>[1]</sup> The minimum mitigation areas are based on a mitigation-to-effect ratio of 2:1 for permanent impacts and 1:1 for temporary impacts.

24. Mitigation areas shall be monitored for a minimum of five years, or longer if necessary, until the mitigation performance and success criteria as specified in the MMP required above have been achieved. The JPA shall submit Annual Reports, acceptable to the Executive Officer, no later than January 31 following each year in which mitigation is monitored, until the mitigation habitat has been successfully established. The Annual Reports shall describe each year's monitoring results, compare these results to the previous years' monitoring results and annual performance and success criteria, and describe progress made towards meeting the approved final success criteria. If annual performance criteria are not met, the Annual Reports shall identify remedial actions that will be implemented to achieve the mitigation success criteria, acceptable to the Executive Officer. The annual mitigation monitoring and reporting activities, and remedial actions as necessary, shall continue until the approved mitigation success criteria have been achieved. In the event it is determined that the proposed success criteria cannot be achieved in a mitigation area, an alternative mitigation plan shall be proposed acceptable to the Executive Officer to supplement and/or compensate for the failed mitigation.
25. Not later than 30 days after successfully completing all the Project's compensatory mitigation, including meeting all mitigation success criteria, the JPA shall submit, acceptable to the Executive Officer, a Notice of Mitigation Monitoring Completion to Susan Glendening at [sglending@waterboards.ca.gov](mailto:sglending@waterboards.ca.gov), or to the current Regional Water Board staff member assigned to the Project. The Notice of Mitigation Monitoring Completion shall reference CIWQS place ID number 757384. The JPA shall submit a comprehensive final mitigation monitoring report, acceptable to the Executive Officer, with the Notice of Mitigation Monitoring Completion. The final mitigation monitoring report shall clearly document: (a) the compensatory mitigation habitat has met the performance criteria specified in the final MMP, and (b) the completion date for mitigation habitat monitoring.
26. The JPA shall use the standard California Wetlands Form to provide Project information describing impacts and restoration measures no later than 14 days from the date of the final MMP approved pursuant to Condition 23. An electronic copy of the form can be downloaded at: <http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml>. The completed form shall be submitted electronically to [habitatdata@waterboards.ca.gov](mailto:habitatdata@waterboards.ca.gov) or shall be submitted as a hard copy to both (1) the Regional Water Board (see the address on the letterhead), to the attention of EcoAtlas, and (2) the San Francisco Estuary Institute, 4911 Central Avenue, Richmond, CA 94804, to the attention of EcoAtlas.
27. The JPA shall coordinate the development of final construction plans with the Corps, USFWS, NMFS, CDFW, and the Regional Water Board that are consistent with a joint approval of design features for all threatened and endangered species including Central Coast steelhead, salt mouse harvest mouse, and Ridgway's rail. The final plans shall include the approved MMP and specifications for marsh restoration. The marsh restoration specifications shall include elevations of marsh and floodplain terraces and associated plant species, channel stability treatments, and habitat treatments for each elevation as specified by a coordinated agreement among the above five agencies. Project construction shall be subject to a letter of final approval by the Executive Officer



contingent upon his/her receipt of letters from the above named agencies that the Project's final construction plans meet their joint requirements.

28. No later than 60 days prior to construction, JPA shall submit, acceptable to the Executive Officer, a Post-Construction Stormwater Management Plan to show how stormwater runoff from newly-created impervious surfaces will be diverted away from any water of the State in the Project area and not result in water quality impacts downgradient of the impervious surfaces. The Post-Construction Stormwater Management Plan shall be consistent with the Regional Water Board's Municipal Regional Stormwater Permit (Order No. R2-2009-0074, as amended by Order No. R2-2011-0083, and as may be subsequently amended or reissued) requirements for post-construction stormwater management for new or replacement impervious surfaces.
29. Should any levee or floodwall settle more than the design projections, the JPA shall expeditiously repair the structure(s) and provide repair reports describing elevation differences from the design and re-evaluate with the resource agencies how to address short term protection needs and long term structural improvements required to maintain public safety.
30. No later than 60 days after completing construction of the Project, the JPA shall submit an as-built report of the Project to the Regional Water Board, acceptable to the Executive Officer. The as-built report shall include revised Project plans showing the actual areas of temporary disturbance and permanent fill. The as-built report shall also describe fill removal activities undertaken to restore temporarily-impacted sites to their original condition. The as-built report shall be submitted either by email to staff or by uploading it to the Regional Water Board's FTP internet site. Instructions for uploading documents to the FTP internet site are available at [http://www.waterboards.ca.gov/sanfranciscobay/publications\\_forms/documents/FTP\\_Discharger\\_Guide-12-2010.pdf](http://www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/FTP_Discharger_Guide-12-2010.pdf). If the as-built report is submitted by uploading it to the FTP internet site, JPA shall notify the Regional Water Board case manager via email.
31. No later than 60 days after receiving all necessary permits, biological opinions, agreements, or other agency approvals, i.e., from the Corps, USFWS, NMFS, CDFW, the Regional Water Board, and BCDC, the JPA shall submit a revised Operations and Maintenance Manual, acceptable to the Executive Officer, that incorporates all modifications to the MMP that were necessitated by conditions of those permits, agreements, or other approvals. The revised Operations and Maintenance Manual shall conform to the following requirements:
  - a. Be consistent with the District's Stream Maintenance Program.
  - b. Clearly specify the responsibilities of the JPA and its delegates for operations and maintenance in accordance with Resolution 14.11.20 and any future resolutions the JPA may adopt to delegate or otherwise define operations and maintenance responsibilities.
  - c. Clearly specify any mitigation actions that may be necessary for operations and maintenance activities, which may include, but not be limited to, addressing potential sedimentation and erosion and other impacts to ensure: (1) long-term habitat protection and enhancement; (2) flood protection performance; and (3) long-term sustainability of the creek channel and the creek-marsh interface along the Faber Tract Levee in face of sea level rise.
  - d. The revised manual may cover regular creek channel operations and maintenance activities in the Project area.

- e. The Operations and Maintenance Manual shall be updated at a minimum every five years to meet the strategies and actions necessary for potential impacts from global climate change, as discussed in the next condition, and to incorporate lessons learned from previous operations and maintenance activities.
32. The JPA shall submit, at least once every five years, a technical report proposing revisions to the Operations and Maintenance Manual, acceptable to the Executive Officer, and describe adaptive management strategies to be implemented, and a corresponding implementation schedule, designed for the continued healthy functioning of the creek channel within the Project area and the creek-marsh interface along the Faber Tract Levee. This technical report shall address the best balance for sediment and hydrology and landscape conditions for the creek channel and marsh in the context of sea level rise and other potential climate change impacts, such as changes in storm surges and the tidal prism, for the primary purpose of implementing long-term protection strategies for the endangered species dependent on the creek channel and marsh. The technical reports shall make recommendations to adjust the Project as necessary to manage potential future impacts based on the most current climate change science within each five-year cycle.
33. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Title 23 of the California Code of Regulations (23 CCR) subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
34. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 and section 3867 of the California Water Code (CWC) and 23 CCR.
35. Certification is conditioned upon total payment of the full fee required in State regulations (23 CCR §3833). Payment of the full fee amount of \$59,000 was received on March 12, 2013.

Please be aware that any violation of this Certification's conditions is a violation of State law and subject to administrative civil liability pursuant to CWC section 13350. Failure to meet any condition of a certification may subject the JPA to civil liability imposed by the Regional Water Board to a maximum of \$5,000 per day of violation or \$10 for each gallon of waste discharged in violation of this action. Any requirement for a report made as a condition to this action (i.e., condition numbers 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 30, 31, and 32) is a formal requirement pursuant to CWC section 13267 (see Fact Sheet attached), and failure to submit, late submittals, and inadequate submittals, or falsification of technical reports is also subject to civil liability as described in CWC section 13268. We anticipate, should new information come to our attention that indicates a water quality problem with this Project, the Regional Water Board may issue waste discharge requirements pursuant to 23 CCR, section 3857.

Finally, the Regional Water Board recognizes that the JPA plans additional phases of flood management project work on the Creek. The Regional Water Board will not certify any subsequent phases unless the JPA develops and implements, in a timely manner acceptable to the Executive Officer, plans for using a stakeholder coordination team approach to project permitting. Such a team should be jointly formed by the JPA and State and federal regulatory and resource agencies and include interested public stakeholders. The goal of using such a stakeholder coordination approach

would be to help ensure the timely development and implementation of a multi-objective project supported by local, State, and federal stakeholders. The JPA should consider facilitating meetings of such a team by a mutually-agreed upon neutral facilitator. Regional Water Board staff is available to assist the JPA in developing and implementing this permitting approach.

If you have any questions, please contact Susan Glendening at (510) 622-2462 or via email to [sglending@waterboards.ca.gov](mailto:sglending@waterboards.ca.gov).

Sincerely,

Bruce H. Wolfe  
Executive Officer

Attachment 1:

Fact Sheet - California Water Code, Section 13267

Cc: Kevin Murray, JPA, [kmurray@JPA.org](mailto:kmurray@JPA.org)  
Greg Stepanicich, Esq., JPA, [gstepanicich@rwglaw.com](mailto:gstepanicich@rwglaw.com)  
Melanie Richardson, SCVWD, [MRichardson@valleywater.org](mailto:MRichardson@valleywater.org)  
Bill Springer, SCVWD, [bspringer@valleywater.org](mailto:bspringer@valleywater.org)  
Luisa Valiela, U.S. EPA, [valiela.luisa@epamail.epa.gov](mailto:valiela.luisa@epamail.epa.gov)  
Melissa Scianni, U.S. EPA, [Scianni.Melissa@epa.gov](mailto:Scianni.Melissa@epa.gov)  
Jason Brush, U.S. EPA, [R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov)  
Lisa Mangione, Corps, [Lisa.Mangione@usace.army.mil](mailto:Lisa.Mangione@usace.army.mil)  
Gary Stern, NMFS, [Gary.Stern@noaa.gov](mailto:Gary.Stern@noaa.gov)  
Amanda Morrison, NMFS, [Amanda.Morrison@noaa.gov](mailto:Amanda.Morrison@noaa.gov)  
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Bob Batha, BCDC, [bobb@bcdca.gov](mailto:bobb@bcdca.gov)  
Brad McCrea, BCDC, [bradm@bcdca.gov](mailto:bradm@bcdca.gov)

## **Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code**

### **What does it mean when the Regional Water Board requires a technical report?**

Section 13267 of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

### **This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?**

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

### **Are there limits to what the Regional Water Board can ask for?**

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

### **What if I can provide the information, but not by the date specified?**

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

### **Are there penalties if I don't comply?**

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

### **Do I have to use a consultant or attorney to comply?**

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

### **What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?**

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

### **If I have more questions, whom do I ask?**

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov).