



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

December 18, 2015

Executive Office

Mr. Bruce H. Wolfe
Executive Director
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612-1413

Dear Mr. Wolfe:

The United States Army Corps of Engineers (USACE), San Francisco District would like to express our gratitude for the San Francisco Regional Water Quality Control Board's (RWQCB) detailed response to our 401 Water Quality Certification application (Application) for the Berryessa Creek Flood Risk Management Project (Project). The USACE believes that the Application is complete. The intent of this letter is to explain how all of the necessary information is present to enable RWQCB to consider the Application.

1. Permitted entities.

The RWQCB contends that the Santa Clara Valley Water District (SCVWD) must be a named applicant on the Application. Although SCVWD is our non-federal sponsor, the Project is a congressionally authorized project for which obtaining the 401 Water Quality Certification is an inherently governmental function for USACE due to the fact that the Project is a federally lead construction action. Accordingly, the USACE is the sole applicant. The operation and maintenance of this channel is not included in this Application. The SCVWD will be responsible for operation and maintenance of the Project. Future maintenance activities with SCVWD will comply with applicable federal and state laws including obtaining a waste discharge requirement (WDR) from the Regional Board if required.

2. Project impacts need to be fully described.

The discussion on the nature of the impacts of the project is found in the March 2014 Final General Reevaluation Report/Environmental Impact Statement (GRR/EIS) and the Clean Water Act (CWA) § 404(b)(1). No beneficial uses of the creek will be permanently impacted by the Project. The impacts to the 4.18 acres of streambed will be temporal and limited to the construction activities. The Project will not result in a net loss of waters of the United States. Excavation will occur and buried riprap will be placed and the banks will be stabilized with bioengineering methods and hydroseeding. These impacts are limited in duration and, as described in the 404(b)(1) analysis, will not result in a degradation of the environment.

As the U.S. Fish and Wildlife Service (USFWS) April 26, 2013 Coordination Act Report (CAR) conceded, “[t]he highly impacted nature of the creek provides little habitat or diversity for fish and wildlife species in its current state.” The CAR went on to state “[p]otential steelhead use of Berryessa Creek is limited by several physical conditions. Continuous flows of suitable depth (at least 7 inches) for adult steelhead passage occurred for only an estimated 2 to 5 days during the 2-year flow monitoring study.”

At the junction to Piedmont Creek, a permitted water source results in year round water, pending the release of the drinking water. As a result of this artificial water source, wetland species have established into the edge of the Creek in this area. As this is non-hydric soil and this is not a natural hydrology feature, these are not considered wetlands that would require mitigation. Vegetation species that are currently present which colonized through natural means are expected to recolonize again in a similar fashion. In an attempt to foster the recolonization of wetland species, plantings will be done through seed in the areas where water is present.

There are no impacts to the Lower Berryessa project that are expected beyond the baseline of the No Project condition. The Project will provide improved functioning of the system reducing bank failure and the subsequent sediment loading. Also, the Project will result in reduced maintenance over the existing baseline condition which will be an improvement to the system functioning. There is no planned future work in the “Greenbelt Area” which is upstream of, and outside, the Project area and will not be affected directly or indirectly by USACE or SCVWD.

3. Project alternatives need to be appropriately considered and appropriate compensatory mitigation proposed.

The Alternatives Analysis is Comprehensive and Complete

As for the RWQCB’s determination that no alternatives analysis was prepared by the USACE pursuant to federal guidelines prior to concluding that the USACE’s proposed design of the Project is the Least Environmentally Damaging Practicable Alternative (LEDPA), the USACE respectfully disagrees. The March 2014 GRR/EIS, with its accompanying 404(b)(1) alternatives analysis, clearly completed such analysis. These environmental analyses determined the chosen Project design was the National Economic Development Plan (NED), the National Environmental Policy Act (NEPA) environmentally preferable alternative, the California Environmental Quality Act (CEQA) § 15126.6(e)(2) environmentally superior alternative, and the LEDPA. Significantly, the RWQCB provided no comments to the USACE during the NEPA process.

As the USACE understands it, the RWQCB believes it has independent authority under the Basin Plan to make 404(b)(1) LEDPA determinations because the 404(b)(1) Guidelines and LEDPA requirement have been incorporated by reference. However, as an inherently federal, USACE function, the RWQCB lacks authority to make a separate LEDPA determination under the CWA § 401. If the RWQCB was to object to the USACE’s LEDPA determination, the RWQCB should have done so during the NEPA process. The NEPA

process concluded in 2014, when USACE signed the Record of Decision on May 29, 2014. It is notable that the U.S. Environmental Protection Agency did comment on the Project during their NEPA review and did not challenge USACE's 404(b)(1) analysis or its choice of LEDPA.

Even if the RWQCB had the authority to apply the 404(b)(1) Guidelines and make a LEDPA determination pursuant to their authority under the CWA § 401, there is no justification for requiring environmental enhancement. It appears that the RWQCB utilizes a unique metric for determining the LEDPA where they seek to require the most environmentally productive aquatic alternative regardless of current environmental baseline conditions. The RWQCB interprets their regulations to require increasing the functions and values of habitat in order to warrant providing a 401 Certification. Though the Project improves upon the current environmental baseline state, RWQCB attempts to require the USACE to take responsibility for undoing decades of environmental decay for which the federal government is not responsible. The USACE has found no precedent for such an interpretation of the LEDPA standard. To the contrary, the regulations and courts recognize the necessity of taking into account costs, overall project purposes, and the current state of the environment.

In addition, the RWQCB has several policies - State Board's Resolution # 68-16 (Anti-degradation Policy), California Wetlands Conservation Policy - August 23, 1993 (No net loss), Executive Order W-59-93 (Wetlands Conservation Policy), and the Basin Plan's avoidance and minimization requirements which they claim are applicable to the Project. However, none of these regulations require projects to improve the environments they impact beyond those impacts they cause. Rather, the requirement is to prevent net harm.

No Additional Alternatives Analysis is required

The USACE apologizes for the misunderstanding and never intended to agree to analyze a similar project alternative to the GRR/EIS's Alternative 3B. In fact, the USACE is uncertain as to why the RWQCB requires an additional analysis of a similar alternative to Alternative 3B. Alternative 3B was analyzed in the GRR/EIS and screened out for high cost, \$153million for 3B compared to the selected plan which is currently \$27million and since it did not provide "any substantial environmental advantages [when] compared to [the Project]," considering the above mentioned lack of species present in the Project area. Alternative 3B should not be considered the LEDPA due to the excessive cost as the LEDPA must be practicable based on cost, technology, and logistical factors.

As explained in previous conversations, the construction authority in the Water Resources Development Act of 1990, Pub. L. No. 101-640, § 101(a)(5), 103 Stat. 4606 (1990) limits the Project to a single purpose, flood control. Therefore, the USACE would need to seek additional authorization to construct a project with the added purpose of environmental enhancement. Such authorization would be difficult to justify considering the currently degraded state of the Creek.

The Project will have a Net Positive Impact on the Environment

A future without the project would be characterized by a continued, and likely increased, flood threat, continual loss of any native species in the floodplain and stream, and increased sediment deposition and bank erosion. By reducing flood risk, the Project prevents contamination impact from adjacent commercial parcels and reduces the risk of potential damage to the surrounding habitat from uncontrolled flood waters. In addition, bank stabilization throughout the Project averts bank failure and the resulting sedimentation, which will protect water quality. Finally, the current baseline environmental conditions have invasive vegetation; the Project would result in the removal of these species and reseeded with native grasses. Therefore, the GRR/EIS determined that the Project would cause no overall environmental damage and would provide a net positive impact.

There is no information presented showing what beneficial uses the Project would degrade. In the Project area, Berryessa Creek has limited flows, poor water quality, lack of a riparian zone, and almost a complete disconnection from the floodplain, just to name a few environmental constraints. It is thus, unsurprising that there are no state or federally listed special status species of any kind in the area. All the evidence shows that the Project will not cause additional impacts to this environment. Therefore, there is no requirement for compensatory mitigation. Since there will be no net loss, the design is currently self-mitigating.

Moreover, even if the Project underwent an environmental enhancement, the current hydrology shows that there is not enough water present in the system to support the establishment of high quality aquatic habitat. The USFWS noted “the only fish species likely to be found in the project area are the mosquitofish and California roach . . . The mosquitofish is a non-native freshwater species introduced throughout California for mosquito control. The California roach is a native species widely distributed throughout central and northern California. Neither the mosquitofish or California roach is State or federally listed, or has any special status.” During the site visits the RWQCB has noted the presence of egrets in or around the creek; egrets are often observed in fresh or salt water ponds hunting for fish, frogs or other small aquatic animals. Since egrets hunt more than fish, their presence is not a clear indication of the presence of fish in the creek. Additionally during one visit multiple ducks were observed; however the life stages of the ducks was not made known to the USACE. For instance if the ducks were observed in breeding colonies or if fledglings were observed this would indicate the habitat is biologically a high value habitat to the species, on the contrary if there were only adults present it could have been nothing more than a passing stop for ducks which have been known to utilize any standing water regardless of habitat value. The USACE is not able to concur that the combination of egrets and ducks present is an indication that “this creek clearly provides valuable habitat”. The extrapolation from an observation of egrets and ducks in the stream to an overall assessment of ecological value is not scientifically valid. The GRR/EIS's comprehensive assessment of habitat value developed in consultation with the USFWS is a scientifically valid basis for project planning.

4. Project design changes to reduce impacts and protect beneficial uses.

The USACE has appreciated all the comments the RWQCB has provided with regard to the Project design. However, the USACE is not able to implement such significant design changes at this point without new Congressional authorization and significant additional appropriations. The RWQCB should have provided its inputs during the feasibility phase of the Project study. The USACE did consider the 2006 RWQCB suggestion of including an analysis of a terraced channel concept. That suggestion became Alternative 3B, which is referenced above. While it has become clear now that the RWQCB takes issue with the analysis of Alternative 3B, these comments were not made during the NEPA process where the USACE could have appropriately addressed them. With the NEPA process completed, the USACE is only able to make minor cost saving design changes, i.e. our value engineering process. Value engineering changes may not substantially modify the intended design. An example of such a change is the removal of the geocell bank stabilization which was made in response to RWQCB's request. All of the other items identified to date by the RWQCB would have a negative impact on the flood carrying capacity and result in significant design and cost changes. Specifically:

(1) planting willow stakes in the streambed edges;

The planting of shrubbery and trees within the channel would result in a lessened flow capacity and reduce flood fighting ability. Additionally, having trees within the channel that have the potential to become dislodged during a flood event would result in the potential for damage to the channel and increase in sedimentation from bank failure. The planting of willows on the top of bank has been found to be infeasible due to the elevated height of the banks and the depth to groundwater. USACE will be planting native species on the banks and in the available right of ways. The plantings have been coordinated with USFWS.

(2) installing the proposed pre-cast concrete culverts at grades that allow the formation of earthen bottoms;

Reducing capacity within the box culvert would decrease carrying capacity which would require a larger culvert. The configuration of a larger box culvert would not be able to be constructed within the existing constraints as there is a conflict with the sewer crossing below the Creek at Los Coches and Piedmont Creek. At the trestle bridge the construction of a larger culvert would require additional floodwalls and the restrictions on the alignment would prohibit this option. With all three culverts, flood velocities would wash out any material that would be placed above the concrete and that would hydraulically impact the structure.

(3) using bioengineering methods in place of concrete for some or all floodwalls;

Bio-engineered methods are limited in their applicability. One major limitation is flow velocities; concrete can handle greater flow velocities than bio-engineered methods. The design of the Project provides conveyance of a median 0.01 exceedance probability discharge (4,100 cfs). Analysis showed that the design discharge would produce velocities greater than 15 ft/s and shear stress greater

than 4 lbs/ft² through transitions. This magnitude exceeds permissible shear stresses for bio-engineered methods and typical rip-rap erosion protection and compels the recommendation for concrete wingwalls and transition structures.

- (4) identifying opportunities to maximize both flood conveyance capacity and opportunities for future adaptive management of the channel by increasing channel cross section. For example, such increased channel cross section could THbe completed where the 60 percent design plans propose reaches with maintenance access roads on both sides of the channel, by removing or lowering the road on the non-multi-purpose path side

While the act of simply removing a road can be done within the Project authority, the increased channel cross section may not be done. The additional excavation has not been presented in the GRR/EIS with the resulting implications for the environmental impacts to both air and land quality. Further, the cost for additional construction and the necessary disposal for the extra material has not been captured into the current approved design; results of these costs would be very high due to the need for disposal of the excavated material, as there is no space onsite for reuse of the material. Lowering the road would result in the reduced carrying capacity for the flood fighting which is the intent of the Project; therefore this cannot be done. Finally, and most importantly, the terraced design feature was screened out in the decision document. Constructing a project that is outside of the authorized project and is in direct contrast to the determinations made in the decision document would not be allowed without additional Congressional authorization.

5. Excavation and fill needs to be fully described.

An evaluation of potential sources of Hazardous, Toxic and Radioactive Waste (HTRW) that is similar to an ASTM 1527 Phase I was done with the GRR/EIS. The evaluation found two areas of potential water quality threats, one of them has already been issued closure by the RWQCB and the other is Jones Chemical Industry (JCI) (addressed in #10 below). There is no issue with respect to the concern for water quality from the areas of excavation in the Project, with the exception of JCI which is above drinking water levels and will be managed as described in #10 below. Soil sampling in the project area was conducted in the Project Geotechnical Report (Tetrattech, April, 2015) and the Project HTWR Soil Sampling report (Tetrattech, January, 2015) and found that the soil was not impacted to levels that would require special handling.

The table below shows the approximate quantities: unit areas are represented when is appropriate for a three dimensional field, and linear feet when one dimensional:

	Reach No.	1	2	3	4	5	6	7	8	9	10	11	12	Totals
	Reach Description	I-680 To Montague	Under Montague Expressway	Montague to UPRR Trestle	UPRR Trestle	UPRR Trestle to Culvert	UPRR Culvert to Ames	Ames Bridge	Ames to Yosemite	Yosemite Bridge	Yosemite to Los Coches	Los Coches Bridge	Los Coches to Calaveras	
Linear Extent of Work Item	Begin Station	167+55.97	164+92.98	159+93.45	150+00.	141+08.44	137+70.	137+00.	124+53.3	123+85.	93+76.17	92+20.88	87+21.52	
	End Station	191+00.	167+55.97	164+92.98	159+93.45	150+00.	141+08.44	137+70.	137+00.	124+53.3	123+85.	93+76.17	92+20.88	
	Length (ft)	2344.03	262.99	499.53	993.45	891.56	338.44	70.00	1246.70	68.30	3008.83	155.29	499.36	
Earthwork Volumes	Cut Volume	19,198	0	4,320	8,491	7,752	2,749	509	6,954	2,219	51,689	0	25,180	129,061
	Fill Volume	872	0	29	133	30	27	61	173	0	5,078	0	16,633	23,036
Erosion Control														
Wetland Seed Mix	SY	11,460	1,286	2,442	4,857	4,359	1,655	342	6,095	334	14,710	759	2,441	50,740
Upland Seed Mix	SY	1,563	175	333	662	594	226	47	831	46	2,006	104	333	6,920
Entry/Exit Stabilization	SF	1,000	200	1,000	200	1,000	1,000	200	1,000	200	1,000	200	1,000	8,000
Silt Fencing	LF	470	50	100	200	180	70	10	250	10	600	30	100	2,070
Excavate, Backfill and Compact	CY			250										250
Construct Wingwalls and Headwalls with Rails														0
No. Wingwalls/Headwalls	EA			6										6
CIP Forms	SFC			1,440										1,440
Concrete Material and Placement	CY			58.7										59
Reinforcement Steel	TONS			2.67										3
Construct Railway														0
Railway Construction	LF			120										120
Channel Excavation	CY	19,200		4,320	8,490	7,750	2,750	510	6,950	2,220	51,690		25,180	129,060
Channel Backfill	CY	870		30	130	30	30	60	170		5,080		16,630	23,030
Disposal/Reuse of Excess Material	LCY	18,330		4,290	8,360	7,720	2,720	450	6,780	2,220	46,610		8,550	106,030
Bank Stabilization														
54" Thick Toe Down Riprap	CY								1,307	1,474	1,771			4,553
48" Thick Toe Down Riprap (Bridge Protection)	CY	164				778					1,919		506	3,367
15" Thick Toe Down Riprap	CY										1,192			1,192
12" Thick Toe Down Riprap	CY	2,527		308	952	693	386	73	1,229	0	2,430		520	9,118
9" Thick Toe Down Riprap	CY	867		133	411	239	154	29	489	0	967		195	3,484
Total Riprap	CY	3,558		441	1,363	1,710	540	102	3,025	1,474	8,279	90	1,221	21,804
Total Riprap	Tons	5,942		736	2,276	2,856	902	170	5,052	2,462	13,826		2,039	36,262
Riprap Placement	Tons	5,942		736	2,276	2,856	902	170	5,052	2,462	13,826		2,039	
Class 2 Bedding *	CY	21				97			160	179	944		63	1,464
Class 2 Bedding *	Tons	28.4				97			216.0	241.7	1,274.4		85.1	1,942
Mirafi 18ON Geotextile Material and Placement	SY	10,970		1,290	4,777	3,460	1,833	350	6,427	400	15,750		2,572	47,829

6. Water body impact information is incomplete.

The wetland being referenced by the statement “a wetland exists about 50 feet downstream of the proposed Project” is in reference to the Lower Berryessa project that is outside the Project that is being permitted with this Application and this area will not be impacted. As provided in the original application, Best Management Practices (BMPs) will be followed that will reduce sedimentation during the construction which will result in impacts to the Creek to be localized and temporal.

- Berryessa Creek in the Project area (Calaveras Blvd to I-680) - disturbance of bed and banks during construction increase high flows within the channel after Project construction is complete
- Berryessa Creek downstream of the Project area (downstream of Calaveras Blvd) - increased high flows within the channel after Project construction is complete
- Los Coches Creek at confluence with Berryessa Creek (within about 100 ft of confluence) - disturbance of bed and banks during construction, no change in flows
- Piedmont Creek at confluence with Berryessa Creek (within about 100 ft of confluence) - disturbance of bed and banks during construction, no change in flows
- Lower Penitencia Creek - increased high flows within the channel after Project construction is complete

7. Sediment transport analysis is incomplete.

The Project would result in a channel slope that is very similar to the existing conditions (longitudinal grade between 0.2% and 0.5%), but with a widened channel to handle the 1% flood flows. The proposed channel design includes armoring of the bed and bank toe to prevent erosion, and according to our most recent sediment analyses (Tetra Tech & SCVWD), the proposed reach will act as a threshold channel, passing most all the input sediment through with slight predicted deposition near bridge crossings during large events (Tetra Tech) that will eventually be transported through the system (SCVWD). In addition, in the future removal of sediment will continue in Berryessa Creek. This will limit the amount of sediment inflow into the Project reach. It was also observed through field visits that the existing Project reach was mainly filled with fine sediment from local rill and gully erosion, which appears to be the primary source of sediment in the Project reach areas, since most coarse sediment has deposited in the upstream reaches (from the debris basin, or removed from the channel) when transitioning to the flatter valley slope. With the Project, the banks will be stabilized and local sediment input will further be reduced. In summary, the Creek can pass the input sediment in the long term with predicted little to no sediment removal maintenance required.

The sediment transport model, the Hydraulic Engineering Centers River Analysis System (HEC-RAS) files, and a technical memo which discussed the results and sensitivity modeling performed, was sent to the RWQCB on July 30, 2015 with a final version sent on December 16, 2015.

The existing channel is approximately a uniform width marked with localized areas of minor to moderate bank erosion. The proposed channel configuration includes appreciable

widening downstream of station (STA.) 123+00 and between STA. 167+00 and 180+00, and constructing uniform 2:1 side slopes throughout. In general, USACE design procedures use analysis to validate channel stability and sediment transport for the proposed condition instead of an evaluation of previously constructed as-builts to current conditions. The performance of the existing condition does not provide valuable insight to bank stability, or sediment transport due to the substantive changes in channel configuration and resultant flow dynamics.

During the phone call on December 14, 2015 between USACE and RWQCB, the question was posed as to what the process is for the USACE to modify a project in the event that the sedimentation is different than anticipated and a design change is needed by the USACE. The reference to the procedure is under Engineering Regulation (ER) 1165-2-119; the following excerpts are applicable to this project and future uses as discussed:

Significant modifications to completed projects - modifications which involve new Federal construction or real estate acquisition in order to serve new purposes, to increase the scope of services to authorized purposes beyond that intended at the time of project construction, or to extend services to new beneficiaries (areas) - require authorization by Congress.

Recommendations to modify a project for water quality reasons must be based on thorough analyses to insure that the best uses are made of the available resources. The analyses should include effects on project purposes, technical feasibility, environmental considerations, reasonableness of alternative actions, and economic impacts. Any action proposed by the Corps should be on the basis that it is feasible from an engineering standpoint, environmentally and socially acceptable, and related costs are justified on the basis of combined NED and environmental quality (EQ) effects.

8. Operations and maintenance plan/mitigation and monitoring plan needed.

The SCVWD will be responsible for maintaining and operating the improved creek reaches after construction is deemed complete. Operations will consist of the five activity areas permitted under the Stream Maintenance Program (SMP2) 2014 -2023 Program - sediment removal, bank stabilization, vegetation management, wildlife conflict management, and minor maintenance tasks (i.e. graffiti and rubbish removal). Although the sediment analysis shows no deposition in the project reach, any localized sediment deposition will be maintained through sediment removal. According to the sediment transport model prepared by the SCVWD for this Project (Tetra Tech 2015g), sediment aggradation would only occur at two locations, which include the Union Pacific Railroad (UPRR) trestle and UPRR culvert locations. The maximum increase would be about a foot (for five 10-year events) and would extend some 600 ft upstream of UPRR Culvert (for 100-year flood event). But the total depositional volume for the entire reach downstream of I-680 would be less than in the existing conditions. Under the District's SMP II Manual, sediment removal between Montague Expressway and Calaveras Blvd. is pre-mitigated, therefore effects to vegetation during stream maintenance are less than significant. Upstream of

Montague Expressway, BMPs specified in Section 5 of the SMP II Manual would be applied during sediment removal to ensure that impacts to water quality would be less than significant. Since sediment deposition will be less than under existing conditions, the frequency of sediment removal will be less than existing and SMP2 permits will cover future sediment removal. The other four activities will also occur at a no greater frequency or intensity than under existing conditions and will also be permitted by the SMP2 agency approvals. As stated above, the USACE is not requesting Section 401 Certification for future maintenance of the improved channel. The SCVWD is responsible for this future requirement. Because this Application does not cover future maintenance of the reconstructed creek channel, preparation of a mitigation and monitoring plan is not required at this time.

9. Dewatering plan needed.

A Dewatering Plan is a construction contract submittal required by Section 01 57 19.00 20 Paragraph 3.1.3 of the 65% specifications. Requirements of the plan identify a framework for approval to start in-creek work and absolute constraints (e.g. no direct discharge to sewer). The Dewatering Plan and respective structures, measures, etc. will be developed and proposed by the successful bidder. This strategy effectively transfers responsibility for compliance to the Contractor and ensures implementation is effective and corrective action, if necessary, is swift and real-time. Therefore, there will not be a plan to submit prior to the award of the construction contract. This procedure is consistent with USACE policies and has been implemented in other USACE projects that have had successful issuance of a 401 Water Quality Certification.

10. Groundwater management plan needed.

The area immediately adjacent to JCI is currently undergoing clean up with oversight by RWQCB due to the presence of volatile organic compounds (VOCs) in the groundwater above drinking water standards. It is important to note that the levels of contamination pose no risk to surface water and aquatic life. The low levels of VOCs are not currently being managed through active remediation, rather natural attenuation is being monitored through periodic groundwater monitoring. This groundwater is currently flowing into the Creek without interference, redirection or other management controls. The Project will result in land moving activities in this area which will have the potential to expose the groundwater, if the groundwater table becomes elevated. In this area the groundwater will be contained, diverted to an appropriate onsite treatment facility and then released back to the stream in accordance with National Pollutant Discharge Elimination System (NPDES) General Permit (R2-2012-0012). RWQCB input was solicited through multiple coordination's in the design for the groundwater management plan in this area. USACE plans to comply with the statement with the RWQCB letter dated August 14, 2015 "A copy of the groundwater management plan will be submitted to this agency for our review and comment". A copy of the Groundwater Management Plan will be submitted to RWQCB when the draft is completed which is anticipated to be December 23, 2015.

11. Construction-related pollution prevention plans needed.

Section 01 57 23 (Temporary Storm Water Pollution Control) of the 65% specifications outline requirements for the successful bidder to comply with NPDES associated risks. The Section describes requirements of a project Storm Water Pollution Prevention Plan (SWPPP), qualifications of the SWPPP preparer, and examples of effective BMPs and strategies for effectively preventing against storm water pollution. The SWPP is a construction contract submittal required by Section 01 57 23 Paragraph 1.3.2. This strategy effectively transfers responsibility for compliance to the Contractor and ensures implementation is effective and corrective action, if necessary, is swift and real-time. Therefore there will not be a plan to submit prior to the award of the construction contract. This procedure is consistent with USACE policies and has been implemented in other USACE projects that have had successful issuance of a 401 Water Quality Certification.

12. Application fee needed.

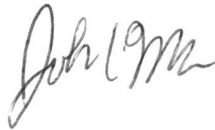
Congress has not waived sovereign immunity with regards to fees for 401 Water Quality Certifications. Therefore, the USACE is not required to pay a fee.

13. CEQA certification needed.

SCVWD circulated a Draft EIR for the project to interested members of the public and government agencies in September 2015 and accepted comments on the Draft EIR during a 47-day comment period ending Nov. 12, 2015. SCVWD received 5 letters commenting on the draft EIR, including a letter from the RWQCB. SCVWD is in the process of preparing the Final EIR which will include detailed response to all comments on the Draft EIR. Certification of the Final EIR is planned for February, 2016. In the event RWQCB does not wish to issue a conditional 401 Water Quality Certification, pending final certification of CEQA, waiting until February to issue the Certification will still meet the current construction schedule and does not pose a significant concern to the USACE.

As is evidenced by all the USACE's responses, the Application is complete and the Project is in compliance with all federal and state laws and regulations. The Project will provide a net environmental benefit from the status quo and provide necessary flood risk management. No beneficial uses of the Creek will be jeopardized by this Project. If you have any questions or require additional information, please contact Ms. Amanda Cruz at (415) 503-6955 or amanda.b.cruz@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Morrow". The signature is written in a cursive style with a large initial "J" and "M".

John C. Morrow
Lieutenant Colonel, US Army
District Engineer