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6 Pacific Rod & Gun Club, Inc.

7 **STATE WATER RESOURCES CONTROL BOARD**

8 **FILE No. _____**

9 **IN RE: ORDER NO. R2-2013-0023**
10 **ISSUED TO PACIFIC ROD AND GUN**
CLUB, INC. and CITY AND COUNTY
11 **OF SAN FRANCISCO SAN**
FRANCISCO PUBLIC UTILITIES
12 **COMMISSION**

RWQCB, SF Bay Region
Order No. R2-2013-0023

PETITION FOR REVIEW
(Request to be held in Abeyance)

Order Issued: June 12, 2013

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15 Petitioner Pacific Rod and Gun Club, Inc. ("Club"), pursuant to Water Code Section
16 13320(a) and Title 23, California Code of Regulations ("C.C.R.") §2050 – 2068, respectfully
17 submits this Petition for Review of Order No. R2-2013-0023, adopted by the California Regional
18 Water Quality Control Board, San Francisco Bay Region, on June 12, 2013. The Order requires
19 the Petitioner and the San Francisco Public Utilities Commission ("SFPUC") to conduct site
20 investigations and perform corrective measures, as necessary, to address soil contamination in the
21 property leased by the PRGC and the adjacent bed of Lake Merced ("Site"). The Order requires
22 plans to be prepared and submitted to remediate soils to meet human health risk standards for
23 current and reasonably foreseeable future land uses. The Order also requires evaluation as to
24 whether remediation of sediment in Lake Merced to meet ecological risk standards is necessary.
25 Also, the Order rescinds Order No. 94-017 because the requirements of that Order have been fully
26 implemented.

27 *[Request for Petition to be Held in Abeyance]*

28 Petitioner, pursuant to 23 C.C.R. §2050.5(d), requests that this Petition be held in

1 abeyance temporarily to provide an opportunity for Petitioner to seek further reconsideration by
2 the Regional Board as to whether the State of California State Lands Commission should be
3 included as a Discharger because of the ownership by the State of California of the bed of Lake
4 Merced offshore of the PRGC facility.

5 **I. PETITIONER**

6 The name and address of Petitioner is:

7 Pacific Rod and Gun Club, Inc.
8 Attn: Patrick Gilligan, President
9 Pacific Rod and Gun Club, Inc.
10 P.O. Box 3276
11 Daly City, CA 94105

12 Petitioner can be contacted through its legal counsel:

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21 **II. ACTION OF THE REGIONAL BOARD TO BE REVIEWED**

22 Petitioner requests that the State Board review Regional Board Order No. R2-2013-0023,
23 which improperly does not name the owner of the bed of Lake Merced which received shot and
24 target debris, State of California State Lands Commission, but only names the Pacific Rod and
25 Gun Club, Inc., the tenant of the upland area of the Site, and the City and County of San
26 Francisco San Francisco Public Utilities Commission, the owner of the upland area of the Site
27 and a portion of the bed of Lake Merced which received shot and target debris from actions of the
28 City. A Copy of the Order is attached as Exhibit 1. This Petition is a protective filing, following
the June 12, 2013 issuance by the Board of the Order, and pursuant to 23 Cal. Code Regs.
§2050.5(d). Petitioner requests that this Petition be held in abeyance by the State Board until
further notice.

29 **III. DATE OF THE REGIONAL BOARD ACTION**

30 The Regional Board adopted Order No. R2-2013-0023 on June 12, 2013.

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2 **IV. STATEMENT OF REASONS**

3 As set forth more fully below, the action of the Regional Board as to Petitioner was not
4 supported by the record, and was arbitrary, capricious, and in violation of law and policy.

5 **A. Background**

6 The Order establishes requirements on Petitioner to investigate the soil of the Site, which
7 includes the upland area adjacent to Lake Merced and the offshore bed of the Lake. The Order
8 asserts that the general public and members of the Club (which has always been a public
9 recreational facility managed in cooperation with the City and County of San Francisco
10 Department of Park and Recreation and the SFPUC) discharged lead pellets from shotguns from
11 the upland area toward Lake Merced. A significant percentage of the lead pellets were
12 incidentally deposited into the Lake. Lead was dredged from the Lake to recover the lead. In
13 1985-1986, the City dredged 128 tons of lead from the Lake. Debris from clay target debris used
14 before 2000 also was incidentally deposited into the Lake. The clay targets used before 2000 are
15 claimed by the Regional Board to have included asphaltic materials or petroleum pitch that
16 contained polycyclic aromatic hydrocarbons ("PAHs").

17 Before hearing this matter, the Board received documentation from the SFPUC,
18 supplemented by the Club that supports the conclusion that most of the bed of the Lake in the Site
19 is owned by the State of California. See Letter of May 30, 2013, from the Club to the Board
20 attached as Exhibit 2. Such lands owned by the State of California are administered by the State
21 Lands Commission.

22 **B. State Water Board Authority**

23 When adopting a cleanup order pursuant to its authority in Water Code §13304, a
24 Regional Board may not prejudicially "abuse" its "discretion." See Water Code §13330(c), Code
25 Civ. Pro. §1094.5(c). A prejudicial abuse of discretion occurs when the Board fails to proceed in
26 the manner required by law, fails to support its Order with findings, or fails to support the
27 findings with substantial evidence. Code Civ. Pro. §1094.5(c); *Topanga Ass'n. for a Scenic*
28 *Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.

1 Section 13304(a) of the Water Code defines "responsible party" as
2 "[a]ny person who ... has caused or permitted, causes or permits, or threatens to cause
3 or permit any waste to be discharged or deposited where it is, or probably will be,
4 discharged into the waters of the state and creates, or threatens to create, a condition of
5 pollution or nuisance."

6 In 1985, almost three decades ago, the State Board established the precedent of naming all
7 "responsible parties" or "Dischargers" in cleanup orders. In its decision, Order WQ 85-7, *In the*
8 *Matter of the Petition of Exxon Company, U.S.A. et al.*, the Board explained:

9 "Generally speaking it is appropriate and responsible for a Regional Board to name all
10 parties for which there is reasonable evidence of responsibility, even in cases of disputed
11 responsibility. However, there must be a reasonable basis on which to name each party.
12 There must be substantial evidence to support a finding of responsibility for each party
13 named. This means credible and reasonable evidence which indicates the named party
14 has responsibility."

15 The following year, 1986, the State Board explained more fully why "all parties" should
16 be named. In *In re Stinnes-Western Chemical Corp.*, Order No. WQ 86-16, Sept. 18, 1986, the
17 State Board elaborated on the public policy considerations. It referred to its decision in *Exxon*,
18 and said "fewer parties named in an order may well mean no one is able to clean up a
19 demonstrated water quality problem. To the extent possible, we believe that multiple parties
20 should properly be named in cases of disputed responsibility. ...

21 In *Stinnes-Western*, the State Board found that such an approach had been and was
22 consistent with state policy. It referred to the May 1986 Final Report of the Governor's Task
23 Force on Toxics, Waste and Technology, which specifically recommended that a "responsible
24 party" be defined broadly. In this way, the "substantial uncertainty over who may be held
25 responsible for cleanup costs" would be reduced. *Id.*

26 Three years later, the State Board heard property owners who wanted to be let off a
27 cleanup order because a former owner, a crop duster had contaminated the property, unbeknownst
28 to them. The State Board explained state policy was that "the user/discharger bears primary

1 responsibility for compliance with Regional Board orders, [and] the landowner must assume
2 ultimate responsibility. ..." *In re Mr. and Mrs. William R. Schmidl*, Order No. WQ 89-1 (Jan. 19,
3 1989). (See also SWRCB Order WQ 86-16, *In the Matter of the Petition of Stinnes-Western*
4 *Chemical Corporation.*)

5 The State Board has consistently applied to current landowners the obligation to prevent
6 an ongoing discharge caused by the movement of the pollutants on their property, even if they
7 had nothing whatever to do with putting it there. (See *Petition of Spitzer*, Order No. WQ 89-8;
8 *Petition of Logsdon*, Order No. WQ 84-6; *and others.*) A lake, whether or not there is an active
9 lead salvage operation occurring – whether with or without the permission of the owner of the
10 lake's bed – should be expected to have continuing movement of pollutants.

11 Applicable State Water Board authority supports the Petitioner's position that the State Lands
12 Commission should be named on the Order. It is "well-established policy"

13 "when there is reasonable evidence of responsibility, multiple parties be named in order
14 to promote cleanup of a demonstrated water quality problem." "[A] balancing of the
15 equities indicates that, whenever possible, a responsible party should not be left to clean
16 up constituents attributable to a different release for which that party is not responsible."

17 *In re Petition of Mehdi Mohammadian*, WQO 2002-0021.

18 Also see *In re County of San Diego, et al.*, Order No. WQ 96-2 (1996)(city development agency
19 which owned land for two years was included as a Discharger because in that case "relatively few
20 [responsible parties] are available.")

21 Order No. R2-2013-0023 includes no findings of fact as to the ownership of the bed of the
22 Lake and no findings of fact as to the effect of the activities of the City in 1985-1986 in dredging
23 out 168 tons of lead. Did the City request a permit from the State Lands Commission? Was the
24 State Lands Commission ever given any notice of the City's dredging of the sediments from the
25 bed of a Lake which are more likely than not lands of the State?

26 The Petitioner intends to participate in carrying out the mandates of Order No. R2-2013-
27 0023 to the extent that it can. However, it should not have to bear the burden and expense of an
28 investigation and remediation that can at any time be challenged by the owner of part of the Site.

1 Naming all potentially responsible parties (i.e., Dischargers) is particularly important where, as
2 here, the areas subject to the cleanup order include areas not owned, leased or occupied by either
3 of the currently-named Dischargers.

4 The Regional Board's adjudication, expressed in its Order, is clearly not supported by
5 adequate findings of fact. *Topanga Association for a Scenic Community v. County of Los Angeles*
6 (1974) 11 Cal.3d 506, 515-517.

7 The State Board has repeatedly pointed out that findings of fact are necessary to "bridge
8 the analytical gap" between raw evidence and the ultimate decision or order." *In re Petition of*
9 *Las Virgenes Municipal Water District* (SWRCB. Feb. 15, 2001) Order No. WQ 2001-03
10 ("findings must explain the reasoning of the agency. They must explain how the law and facts
11 justify the decision or order.")

12 The reason that a governmental agency must explain its reasons; namely, how the law and
13 facts justify its decision, is so that ultimately a reviewing court can understand the basis of the
14 agency's decision. Government agencies, such as Regional Boards, "must render findings
15 sufficient both to enable the parties to determine whether and on what basis they should seek
16 review and, in the event of review, to apprise a reviewing court of the basis for the board's
17 action." *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d
18 506, 514.

19 The Regional Board here did not "render sufficient findings," by issuing a decision that
20 ignores the owner of what more likely than not is most of the area of the bed of Lake Merced
21 affected by the accidental deposit of lead from activities of the public and Club members at the
22 Club, and from the activities of the City in dredging lead.

23 **V. Manner in Which Petitioner is Aggrieved**

24 *See* Paragraph IV above. Petitioner is aggrieved because the Order imposes obligations
25 on Petitioner without including a potentially responsible party, namely, the State Lands
26 Commission.

27 **VI. Specific Action Requested**

28 Petitioner requests that the State Board include the State Lands Commission as a

1 Discharger on Order No. R2-2013-0023.

2 **VII. Statement of Points and Authorities**

3 Petitioner has requested that its Petition be held in abeyance and reserve the right to
4 supplement its Petition with a detailed statement of points and authorities at the appropriate time.

5 **VIII. Regional Board Notification**

6 A copy of this Petition has been sent to the Regional Board, the City of San Francisco and
7 the State Lands Commission.

8 **IX. Statement Regarding Substantive Issues or Objections**

9 See Paragraph IV above. The Order was issued without including the owner of the land in
10 the part of the Lake offshore of most of the Club's trap and skeet ranges. The State Lands
11 Commission's actions or inactions with regard to the activities of the Club and the City make it a
12 necessary party to any determination of liability for correction of any circumstances of
13 contamination that may exist on lands of the State of California. The Order does not include the
14 law and reasons justifying the Regional Board's refusal to name the State Lands Commission as a
15 potentially responsible party (i.e., Discharger).

16 **X. Record and List of Interested Persons**

17 Petitioner has requested that the Petition be held in abeyance and reserves the right to
18 request that the Regional Board prepare the record and a list of persons known to have an interest
19 in the subject matter of this Petition.

20 WHEREFORE, Petitioner requests that this matter be held in abeyance until further
21 notice, and reserves the right to request a hearing to present evidence and authorities that were not
22 available to, or considered by, the Regional Board.

23 Respectfully submitted,

24 THE ARNOLD LAW PRACTICE

25 Dated: June 12, 2013

26 By: 

JAMES R. ARNOLD

27 Attorneys for Petitioner
28 PACIFIC ROD AND GUN CLUB, INC.

EXHIBIT 1

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER NO. R2-2013-0023

REVISED SITE CLEANUP REQUIREMENTS and RESCISSION OF ORDER NO. 94-017 for:
PACIFIC ROD AND GUN CLUB and
CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO PUBLIC UTILITIES COMMISSION

for the property located at:

520 JOHN MUIR DRIVE
LAKE MERCED
SAN FRANCISCO, SAN FRANCISCO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter called the Regional Water Board, finds that:

SITE DESCRIPTION

1. The Pacific Rod and Gun Club (Club) operates a public recreation facility located on the west side of Lake Merced in San Francisco (Site) (see Figure 1). The Club occupies approximately 10 acres of land that is leased from the City and County of San Francisco. The San Francisco Public Utilities Commission (SFPUC), a public agency that is part of the City and County of San Francisco, currently has jurisdiction over Lake Merced. The Club built and maintains facilities at the Site, including skeet and trap ranges where shotguns are used to shoot pellets at clay targets. The Club has operated the facilities and the ranges at the Site since 1934. The facilities are used daily, and the ranges are currently in operation three days a week. For the purposes of this Order, the Club and the SFPUC are jointly considered the Dischargers.

PURPOSE OF ORDER

2. Pursuant to California Water Code (CWC) section 13304, this Order requires that site investigations and corrective measures be performed, as necessary, to address soil contamination in portions of the Site. This Order requires the Dischargers to submit plans to remediate soil to meet human health risk standards for current and reasonably foreseeable future land uses. This Order also requires the Dischargers to evaluate if remediation of lake sediment to meet ecological risk standards is necessary. Lastly, this Order supersedes and rescinds the Regional Water Board's previous order (No. 94-017) because the requirements in the previous order have been fully implemented.

SITE CONTAMINATION

3. From 1934 until 1994, Club members and the general public discharged lead pellets from shotguns in a northeasterly direction toward Lake Merced (Lake), a fresh water lake that was last used for potable water purposes in 1929 and is currently classified as an emergency non-potable water supply by the SFPUC. Since 1994, Club members and the general public

have exclusively used steel shot in trap and skeet activities. The pellets generally travelled 300 to 400 feet from the shooting positions with a significant percentage incidentally deposited into the Lake. Based on the number of shells fired in 1989, an estimate of the amount of lead falling into the Lake was about 27 tons per year. Lead has been successfully removed from the Lake on at least one occasion. During a cleanup dredging effort in 1985-1986, the City removed 128 tons of lead pellets and larger fragments from the Lake.

4. Broken clay targets continue to be deposited into the Lake and adjoining upland areas between the ranges and the Lake. Prior to 2000, clay targets manufactured using asphaltic materials or petroleum pitch (typically containing polycyclic aromatic hydrocarbons (PAHs)) were used at the Site. Fragments of targets containing PAHs can be found in soil at the Site between the ranges and the Lake. Asphaltic materials with PAHs were found in some locations, and PAHs were found in soil throughout the Site. Clay targets used since 2000 do not contain petroleum pitch and are designed to be biodegradable.
5. The two primary environmental threats at the Site are lead pellets and clay target debris incidentally deposited into the Lake and its environs. The potential damages and effects of lead released at trap and skeet facilities are well documented. Direct ingestion of lead pellets and fragments may cause waterfowl deaths. In the Lake Merced area, dabbling ducks are considered the most sensitive receptor with regards to ecologic risk. In both fresh and marine water, lead becomes available to biota through the transformation process of oxidation. The lead pellets and fragments also contained small amounts of other metals such as tin, antimony, and arsenic. The older clay targets formerly used at the Site contained asphaltenes, which in turn contain PAHs. Certain types of PAHs are classified as carcinogenic.

EARLY INVESTIGATIONS

6. In December 1989, samples were taken of the Site's upland soil in some areas and of sediment and water of Lake Merced. Analytical results indicated that lead was elevated in surface soil at concentrations greater than human health guidelines (1000 mg/kg) at several locations. Lead was elevated in a single lake sediment sample but not detected in samples of lake water. In May 1990, a followup study was performed to confirm and delineate the extent of lead in sediment and to perform bioassays of the sediment. Lead was detected in two sediment samples, and no mortality was observed to fish in the bioassay tests.
7. An investigation was conducted in 1992 to determine the extent and quantity of lead in the lake sediments and the water column and assess the presence of lead in biota. It was found that sediment lead concentrations, after removal of lead pellets, exceeded background levels (geometric mean of 143 vs. 39 mg/kg). Also, lead concentrations in aquatic plants (coontail and tule) and fauna (bloodworms, clams, and snails) exceeded background by one order of magnitude. While benthic invertebrate fauna and other organisms in the Lake did not show signs of adverse impacts from lead, the investigation recommended additional biological study to determine whether a risk to the populations of resident and migratory waterfowl existed from ingesting lead pellets in the Lake.

PREVIOUS SITE CLEANUP REQUIREMENTS ORDER NO. 94-017

8. On January 19, 1994, the Regional Water Board issued Site Cleanup Requirements Order No. 94-017 (1994 order) to the Dischargers. The 1994 order required the Dischargers to:
 - a. cease the deposition of lead into the waters of Lake Merced;
 - b. determine the degree to which the populations of resident and migratory waterfowl were affected by the possible ingestion of lead pellets at the Site;
 - c. develop a remedial action plan, if necessary; and
 - d. implement the remedial action plan, if necessary.
9. Several requirements of the 1994 order were implemented. In 1994, the Club prohibited the use of lead shot on the ranges (ammunition is now either steel or bismuth). When biodegradable clay targets without asphaltic materials containing PAHs became available in 2000, the Club switched to these targets on the ranges.
10. In a letter dated April 18, 1995, the California Department of Fish and Game (now, Department of Fish and Wildlife) determined that, based on the limited number of waterfowl species using the Lake and on the mode of feeding observed for waterfowl, the risk of lead uptake from ingestion of lead pellets or lead-contaminated sediments by waterfowl was low. Therefore, the Regional Water Board determined that the remedial action plan required by the 1994 order was not necessary, so it was not prepared.
11. The main objectives of the 1994 order, to cease deposition of lead shot into Lake Merced and to evaluate and remediate risks to waterfowl as needed, have been satisfied and therefore the 1994 order can be rescinded. This Order requires additional remedial actions for meeting human health standards in upland soils and further investigation and evaluation of potential risks to ecological receptors in Lake sediments, as well as remedial actions if needed.

SUBSEQUENT INVESTIGATIONS AND RISK ASSESSMENT

12. On September 23, 2005, the SFPUC submitted to the Regional Water Board the results of an investigation to evaluate whether a proposed raising of the Lake's level would cause adverse human or ecological risks following the inundation of residual lead shot as well as other inorganics and PAHs. The study concluded that under current conditions, residual chemicals in soil, sediment or surface water do not pose a significant health threat to humans, but that surface sediments appear to be heavily impacted by lead and, to a lesser extent, arsenic, and localized impacts to benthic species were possible. The study suggested that lead and arsenic could be leached from freshly inundated soils at concentrations exceeding both drinking water standards and ecological benchmarks.
13. On October 19, 2007, the SFPUC submitted to the Regional Water Board the results of an investigation on the environmental risk of newly inundated lead shot and associated chemicals at the Club following the rise in water levels in the Lake by seven feet compared to the level in 2002. The study evaluated the horizontal and vertical extent of lead and arsenic concentrations in surface water as well as the potential risks associated with lead

and arsenic exposure. Arsenic was not detected in the water samples. The study concluded that while there was a release of lead from inundated soils along a limited portion of the shoreline, the dissolved lead concentrations were not above drinking water standards and the surface water column did not contain dissolved lead above ecological benchmarks.

14. On April 16, 2012, the SFPUC submitted to the Regional Water Board the results of a supplemental investigation and health risk assessment for both human and ecological receptors from possible exposure to chemicals in soil, sediment, and surface water. The results indicated that potential human health risks were within an acceptable risk range for the occasional visitor or offsite resident but for receptors with more frequent exposure, such as an onsite caretaker or a permanent worker, the PAHs, lead, and, to a lesser extent, arsenic in soil throughout the Site exceeded the acceptable risk range. For ecological receptors, both lead and PAHs were found to exceed probable effects levels in sediment at a majority of sampling stations, while arsenic exceeded effects levels at only a few stations. The report concluded that risk reduction and/or risk management measures to mitigate human exposure to lead, arsenic, and PAHs in soil were needed. With respect to ecological receptors, the report also recommended additional monitoring of the metals in sediment and the bioavailability of PAHs. The investigation also concluded that the elevated concentrations of lead, PAHs, and arsenic in sediment were not dissolving into surface water in the Lake, meaning that these constituents pose no risk to human health, the environment, or the beneficial uses of surface water in the Lake given its status as an emergency non-potable water supply for the City of San Francisco.

REMAINING ENVIRONMENTAL CONCERNS

15. There remains a documented potential human health risk from current and future exposure to lead, arsenic, and PAHs accidentally discharged and dispersed into the soils throughout the Site. Also, there remains a potential risk to benthic organisms from exposure to lead, arsenic, and PAHs in the sediment that requires further study and possible remediation.

BENEFICIAL USES

16. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law and U.S. EPA, where required.
17. The SFPUC manages Lake Merced and has designated the lake as a non-potable emergency water supply for the City of San Francisco that would be used for firefighting or sanitation purposes if no other sources of water were available. No potable use of Lake Merced is anticipated. The existing and potential beneficial uses of Lake Merced include:
 - a. Municipal and domestic supply (potential)
 - b. Commercial and sport fishing
 - c. Cold fresh water habitat

- d. Warm fresh water habitat
 - e. Wildlife habitat
 - f. Fish spawning
 - g. Water contact recreation (fishing only)
 - h. Non-contact water recreation
18. State Water Board Resolution No. 68-16: State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to the Dischargers and requires attainment of background levels of water quality or the highest level of water quality that is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background levels shall be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives.
19. State Water Board Resolution No. 92-49 (as amended): State Water Board Resolution No. 92-49 (as amended), "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under California Water Code Section 13304," establishes policies and procedures to be used by the Regional Water Board when:
- a. Determining when a person is required to investigate, cleanup, or abate a discharge;
 - b. Concurring with a discharger's selection of cost-effective investigation and remedial measures;
 - c. Overseeing implementation of investigation and remedial measures; and
 - d. Determining schedules for investigation and remedial measures.
20. Basis for California Water Code Section 13304 Order: The Dischargers have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of contamination or nuisance.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

21. This action adopts an order to enforce the laws and regulations administered by the Regional Water Board. The revision of site cleanup requirements and the rescission of Order No. 94-017 are not projects as defined in the California Environmental Quality Act (CEQA). There is no possibility that the adoption of this order and the rescission of Order No. 94-017 will have a significant effect on the environment. (Cal. Code Regs., tit. 14, §§ 15378 and 15061, subd. (b)(3).)

NOTICE AND MEETING

22. The Regional Water Board has notified the Dischargers and interested agencies and persons of its intent to issue Site Cleanup Requirements and has provided them with an opportunity of a public hearing and an opportunity to submit their written views and recommendations.
23. The Regional Water Board, at a public meeting, heard and considered all comments pertaining to this issuance of Site Cleanup Requirements.

IT IS HEREBY ORDERED, pursuant to CWC section 13304, that the Dischargers (or their agents, successors, or assigns) shall cleanup and abate the effects described in the above findings as follows:

PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner that will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.
2. Migration of pollutants through subsurface transport to waters of the State is prohibited.
3. There shall be no discharge of wastes or hazardous substances to surface waters.
4. Activities associated with the subsurface investigation and cleanup that will cause significant adverse migration of wastes or hazardous substances are prohibited.
5. The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in CWC section 13050(m).
6. The Dischargers shall not cause toxic or other deleterious substances to be present in concentrations or quantities that may cause deleterious effects on aquatic biota, wildlife or waterfowl, or which render any of these unfit for human consumption either at levels created in the receiving waters or as a result of biological concentration.

TASKS

UPLAND SOILS

1. **HUMAN HEALTH CLEANUP STANDARDS:** The Dischargers shall propose cleanup standards for the uplands portion of the Site sufficient to protect human health under current and future uses, including visitors, site workers, and neighbors. Proposed standards shall be supported by an analysis of human health risks associated with exposure to site contaminants.

COMPLIANCE DATE: August 1, 2013

2. **REMEDIAL ACTION PLAN:** The Dischargers shall submit a technical report acceptable to the Executive Officer containing a remedial action plan and an implementation time schedule. This report shall evaluate the removal and/or management of soil to meet the human health cleanup standards in the reports required in Task 1. The Dischargers shall also submit documentation demonstrating compliance with CEQA in the selection of the remedial action plan so that the Executive Officer may consider the environmental impacts of the remedy prior to approval of the remedial action plan.

COMPLIANCE DATE: July 1, 2014

3. **COMPLETION OF REMEDIAL ACTION:** The Dischargers shall submit a technical report acceptable the Executive Officer documenting the completion of the tasks identified in the technical report required in Task No. 2.

COMPLIANCE DATE: January 1, 2016

LAKE SEDIMENTS

4. **WORKPLAN FOR ECOLOGICAL RISK ASSESSMENT:** The Dischargers shall prepare and submit a workplan and schedule to implement a comprehensive investigation and ecological risk assessment including analysis of existing sediment data and hypothetical risks to wildlife from exposure to impacted sediments in Lake Merced. This investigation would be used to determine whether elevated levels of lead, arsenic, and PAHs in sediment pose an unacceptable risk to benthic organisms and wildlife (including waterfowl) based on bioavailability and long term exposure. If results indicate unacceptable risks to benthic organisms and wildlife, the evaluation would then be used to determine appropriate cleanup standards for the protection of the benthic community and wildlife exposed to contaminants in site sediments.

COMPLIANCE DATE: December 1, 2013

5. **ECOLOGICAL RISK ASSESSMENT:** The Dischargers shall submit a technical report acceptable to the Executive Officer documenting the completion of the tasks identified in the technical report required in Task No. 4.

COMPLIANCE DATE: October 1, 2014

6. **REMEDIAL ACTION PLAN:** If requested by the Executive Officer, the Dischargers shall submit a technical report acceptable to the Executive Officer containing a remedial action plan and an implementation time schedule. This report shall evaluate the removal and/or management of sediment per the results of the Ecological Risk Assessment submitted to comply with Task No. 5. The Dischargers shall also submit documentation demonstrating compliance with CEQA in the selection of the remedial action plan so that the Executive Officer may consider the environmental impacts of the remedy prior to approval of the remedial action plan.

COMPLIANCE DATE: Three months after request by the Executive Officer

7. **COMPLETION OF REMEDIAL ACTION:** If requested by the Executive Officer, the Dischargers shall submit a technical report acceptable the Executive Officer documenting the completion of the tasks identified in the technical report required in Task No. 6.

COMPLIANCE DATE: Two Years after request by the Executive Officer

PROVISIONS

1. Compliance: The Dischargers shall comply immediately, or as prescribed by the time schedule contained herein, with all Prohibitions, Tasks, and Provisions of this Order. All required submittals must be acceptable to the Executive Officer. The Dischargers must also comply with all conditions of this Order. Violations may result in enforcement actions,

including Regional Water Board orders or court orders requiring corrective action or imposing civil monetary liability, or in modification or revocation of this Order by the Regional Water Board. (CWC §§ 13261, 13262, 13265, 13267, 13268, 13300, 13304, 13350).

2. Authority to Request Technical Reports: All technical and monitoring reports required by this Order are requested pursuant to CWC section 13267. Failure to submit reports in accordance with schedules established by this Order or failure to submit a report of sufficient technical quality to be acceptable to the Executive Officer may subject the Dischargers to enforcement action pursuant to CWC section 13268.
3. Authorized Reports: All technical reports submitted pursuant to this Order shall be prepared under the supervision of and signed by a California registered civil engineer or a California professional geologist.
4. Modifications to Remedial Action Plan: The Dischargers shall notify the Executive Officer at least 60 days prior to implementing any proposed major modifications to any approved Remedial Action Plan, Implementation Schedule, or remediation system. The notification shall include the rationale for any proposed modification.
5. Delayed Compliance: If the Dischargers are delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the Tasks, the Dischargers shall promptly notify the Executive Officer of the delay and reason for the delay and the Regional Water Board may consider revisions to this Order.
6. Operation and Maintenance: The Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
7. Availability: A copy of this Order shall be maintained by the Dischargers and shall be made available by the Dischargers to all employees or contractors performing work necessary to comply with the Tasks set forth in this Order.
8. Change in Ownership: In the event of any change in control or ownership of the facility presently owned or controlled by the Dischargers, the Dischargers shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Regional Water Board upon a final change in control or ownership.

To assume operation of this Order, the succeeding owner or operator must apply in writing to the Executive Officer requesting transfer of this Order within 30 days of the change of ownership. The request must contain the requesting entity's full legal name, mailing address, electronic address, and telephone number of the persons responsible for contact with the Regional Water Board. Failure to submit the request shall be considered a discharge without requirements, a violation of the CWC.

9. Reporting of Hazardous Substance Release: If any hazardous substance is discharged in or on any waters of the State or discharged or deposited where it probably will be discharged in or on any waters of the State, the Dischargers shall:
- a. Report such discharge to the following:
 - i. The Regional Water Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8 a.m. – 5 p.m.); and to
 - ii. The California Emergency Management Agency at (800) 852-7550.
 - b. A written report shall be filed with the Regional Water Board within five working days. The report shall describe:
 - i. The nature of the waste or pollutant.
 - ii. The estimated quantity involved.
 - iii. The duration of the incident.
 - iv. The cause of the release.
 - v. The estimated size of the affected area, and nature of the effect.
 - vi. The corrective actions taken or planned and a schedule of those measures.
 - vii. The persons/agencies notified.

This reporting is in addition to any reporting to the California Emergency Management Agency that is required pursuant to the Health and Safety Code.

10. Lab Qualifications: All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Regional Water Board using approved U.S. EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control (QA/QC) records for Regional Water Board review. This provision does not apply to analyses that can only reasonably be performed onsite (e.g., temperature).
11. Document Distribution: Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following entities:
 - a. The Regional Water Board, and
 - b. The Department of Toxic Substances Control.The Executive Officer may modify this distribution list as needed.
12. Submittal Revisions: Where the Dischargers become aware that they failed to submit any relevant facts in a report or submitted incorrect information in any report to the Regional Water Board, they shall promptly submit such facts or information.
13. Severability: Provisions of this Order are severable. If any provisions of these Requirements are found invalid, the remainder of these Requirements shall not be affected.
14. Geotracker Requirements: The State Water Board has adopted regulations requiring electronic report and data-submittal to Geotracker. The text of the regulations can be found at the following URL:

http://www.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal/index.shtml

Parties responsible for cleanup of pollution at sites overseen by the Regional Water Board's Land Disposal Programs are required to submit the following information electronically to Geotracker:

- a. Groundwater analytical data;
- b. Surveyed locations of monitoring wells;
- c. Boring logs describing monitoring well construction; and
- d. Portable data format (PDF) copies of all reports (the document in its entirety [signature pages, text, figures, tables, etc.] must be saved as a single PDF file).

Note that the Dischargers are still responsible for submitting one hard copy of all reports pursuant to this Order. The Regional Water Board may require direct submittal of electronic reports and correspondence in addition to the State Water Board's Geotracker requirements.

15. Entry and Inspection: The Dischargers shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
 - a. Enter upon the Dischargers' premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - d. Sample or monitor at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the CWC, any substances or parameters at any location.
16. Maintenance of Records: The Dischargers shall retain records of all monitoring information including all calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. This period may be extended during the course of any unresolved litigation regarding this discharge or when requested by the Executive Officer. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individuals who performed the sampling or measurements;
 - c. The date(s) analyses were performed;
 - d. The individuals who performed the analyses;
 - e. The analytical techniques or method used; and
 - f. The results of such analyses.
17. Report Certification: All application reports or information to be submitted to the Executive Officer shall be signed and certified as follows:

- a. For a corporation – by a principal executive officer or the level of vice president.
- b. For a partnership or sole proprietorship – by a general partner or the proprietor, respectively.
- c. For a municipality, State, federal, or other public agency – by either a principal executive officer or ranking elected official.

A duly authorized representative of a person designated in this provision may sign documents if all of the following are met:

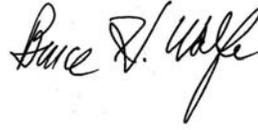
- The authorization is made in writing by a person described in paragraph (a) of this provision;
- The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility or activity; and
- The written authorization is submitted to the Executive Officer.

Any person signing a document under this Provision shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.” (CWC §§ 13263, 13267, and 13268.)

18. Cost Recovery: The Dischargers (as applicable) shall be liable, pursuant to CWC section 13304 and Health and Safety Code section 25270.9 to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Discharger (as applicable) over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.
19. Periodic Order Review: The Regional Water Board will review this Order periodically and may revise it when necessary. The Dischargers (as applicable) may request revisions and upon review the Executive Officer may recommend that the Regional Water Board revise these requirements.
20. Order No. 94-017 is hereby rescinded.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Region, on June 12, 2013.



Digitally signed
by Bruce H. Wolfe
Date: 2013.06.14
17:39:17 -07'00'

Bruce H. Wolfe
Executive Officer

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**FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY
SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED
TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER
CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL
FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY**

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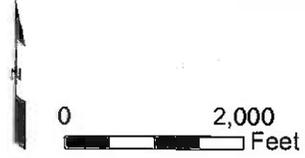
Figures:

Figure 1 - Location Map

File path: S:\15200\15280\15280.000\task_08\11_0131_prgc_fig_01\sim.mxd; Date: 04/19/2011; By: kristin.uber



Base map from USGS 7.5' San Francisco South, California topographic quadrangle.



SITE LOCATION MAP
Pacific Rod and Gun Club
San Francisco, California

EXHIBIT 2

The Arnold Law Practice

San Francisco Office

One Sansome Street, Suite 3500

San Francisco, CA 94104

Telephone: 925-284-8887

Facsimile: 925-284-1387

Email: jarnold@arnoldlp.com

URL: www.arnoldlp.com

Please note our new address.

Contra Costa Office

3685 Mt. Diablo Boulevard

Suite 331

Lafayette, CA 94549

Telephone: 925-284-8887

Facsimile: 925-284-1387

Please respond to our

Contra Costa Office

**BY EMAIL,
ORIGINAL BY USPS**

May 30, 2013

Mr. Alan Friedman
San Francisco Bay Region
California Regional Water Quality Control Board,
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Tentative Order No. R2-2013- for Site Cleanup Requirements and Rescission
of Order No. 94-017, Pacific Rod & Gun Club Lake Merced Site.

Dear Alan:

As you know, I represent the Pacific Rod and Gun Club, Inc., a California nonprofit corporation. We respectfully submit that the Tentative Order under consideration should include the State as a responsible party.¹ According to the maps supplied by the City, aerial photos, and historical maps of the Rancho Laguna de la Merced, most of the bed of the Lake offshore of Fields 1 through 7 is owned by the State. Some of the upland, or foreshore area, also appears to be below the historical mean high water mark, according to the available maps, and so is also owned by the State.

I am sending a copy of this letter to Mr. Milstein, attorney for the City, with a request that we review together as soon as possible the maps and other documents that he has available.

The City has concluded that a map Mr. Milstein provided to you (the "163" map) "...shows the label for the club (when magnified) to be within the rancho boundary..." However, when we look at this map and the 1871 plat of the Rancho Laguna de la Merced, we can see that the "geometry" of the Lake, including the "cove" between the

¹ As I mentioned to you earlier today, we also have some comments on the letter of May 17, 2013 that you received from the San Francisco PUC. We will have those comments for you tomorrow.

Mr. Alan Friedman
May 30, 2013
Page 2 of 3

SFPD facility and the Club's area appears remarkably the same in both the 1871 plat map and in the more recent "163" map. (Copies of these two maps are enclosed for easy reference, respectively, as Exhibits A and B.)

The following explains the basis for these conclusions in more detail.

The copy of the 1871 plat map we received from the City is fairly obscured, but it does show the western boundary of the Rancho land grant. On the "163 map" provided by the City there has been drawn a North-South line and a legend stating "*Approx. Western Boundary of Laguna de La Merced.*"

Some more clear copies of historical maps of the Rancho Laguna de la Merced are available from the Internet. (Copies are enclosed as Exhibits C and D.) They depict the boundary lines of the Rancho. They show the western boundary to be a roughly North South line cutting across the Lake.

There are also a couple of helpful aerial photos. The first aerial photo is an AMEC aerial photo, provided by the City. (Exhibit E) The second is a current aerial photo of the Club's facilities, provided by the Club to the City recently. (Exhibit F)

Using the "163" map, with the line shown as the West boundary of the Rancho Laguna de la Merced, a red line can be drawn on both aerial photos to mark what appears to be the North South line for the western boundary of the Rancho Laguna de la Merced.

From all of this, it appears that the bed of the Lake offshore of Trap and Skeet Fields 1-7 (i.e., the shoreline from the "cove" to the rifle range building) is more likely than not "lands of the State." (See Exhibit F). In addition, some of the foreshore between the shooting fields and the present water's edge is also owned by the State. California acquired sovereign fee ownership of the lands between low and high water in nontidal navigable lakes and rivers upon its admission to the Union in 1850. *State of California v. Superior Court (Lyon)* (1981) 29 Cal. 3d 210, 217-222. The Lake was periodically connected to the Pacific Ocean at the time of statehood.

The general policy of the Board has been to name all property owners, pursuant to Section 13304, Water Code, as responsible parties. Naming the State should facilitate both the needed investigation and the resolution as to what is needed for the Board, the City, and the State to carry out their responsibilities.

We urge the Board to include the State as a responsible party on the Proposed Order for Site Cleanup Requirements.

Very truly yours,



James R. Arnold

Mr. Alan Friedman
May 30, 2013
Page 3 of 3

Encls. – as noted

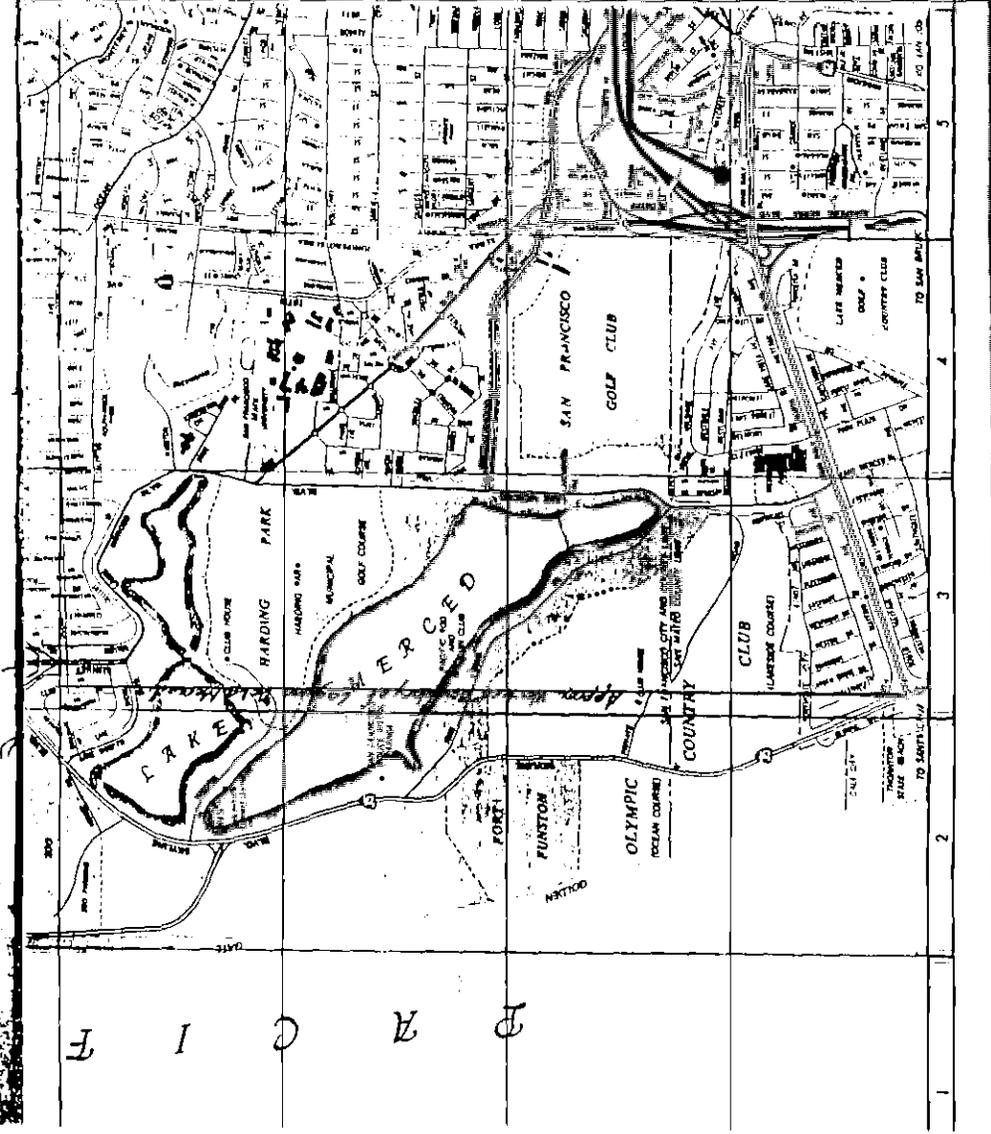
Cc (w/encls.):

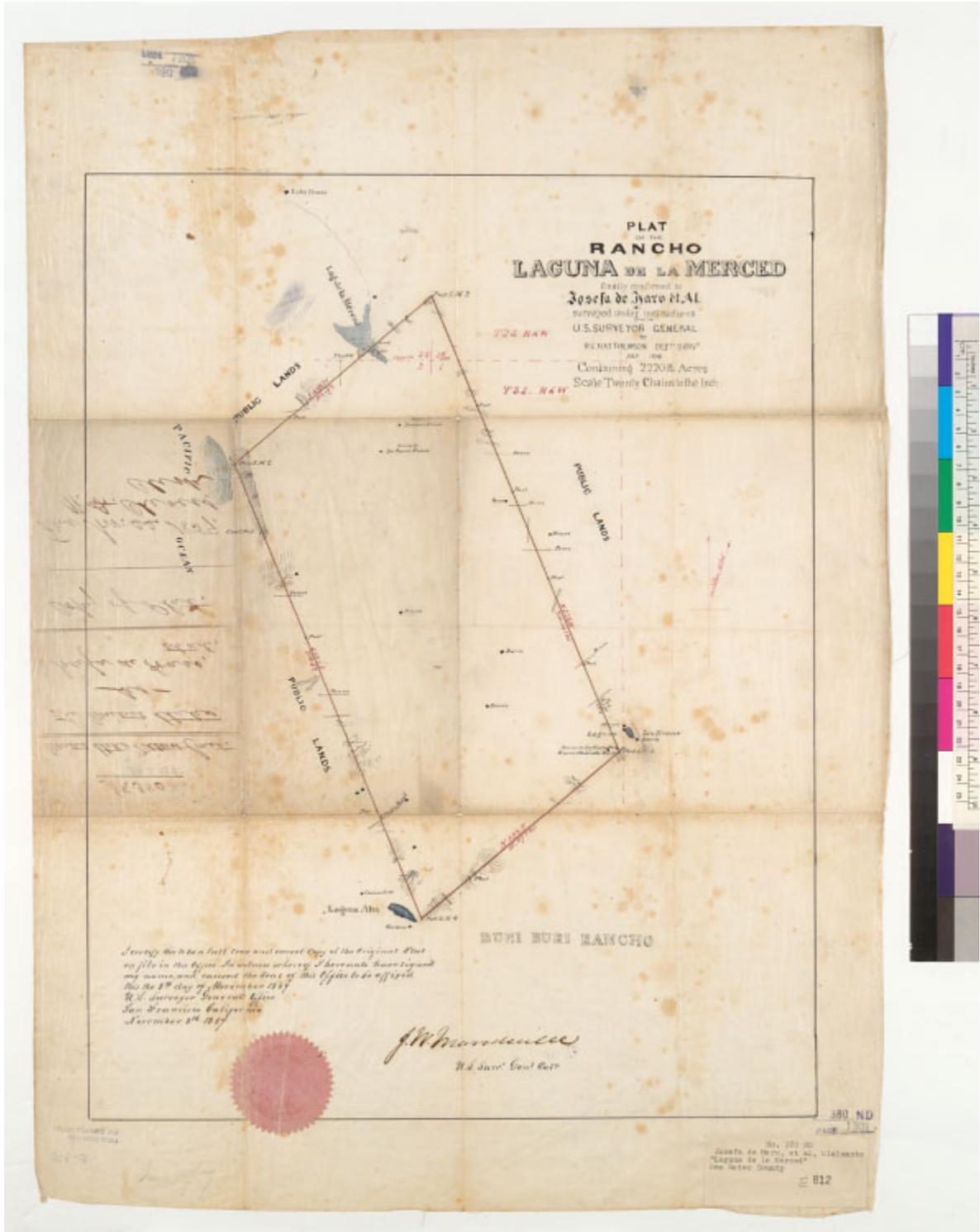
Mr. Patrick Gilligan, President, Pacific Rod & Gun Club, Inc.
Mr. Josh Milstein, Office of the City Attorney, City and County of San Francisco

Be advised 2 publications are filed in lieu of 10.

163 *Handwritten signature*

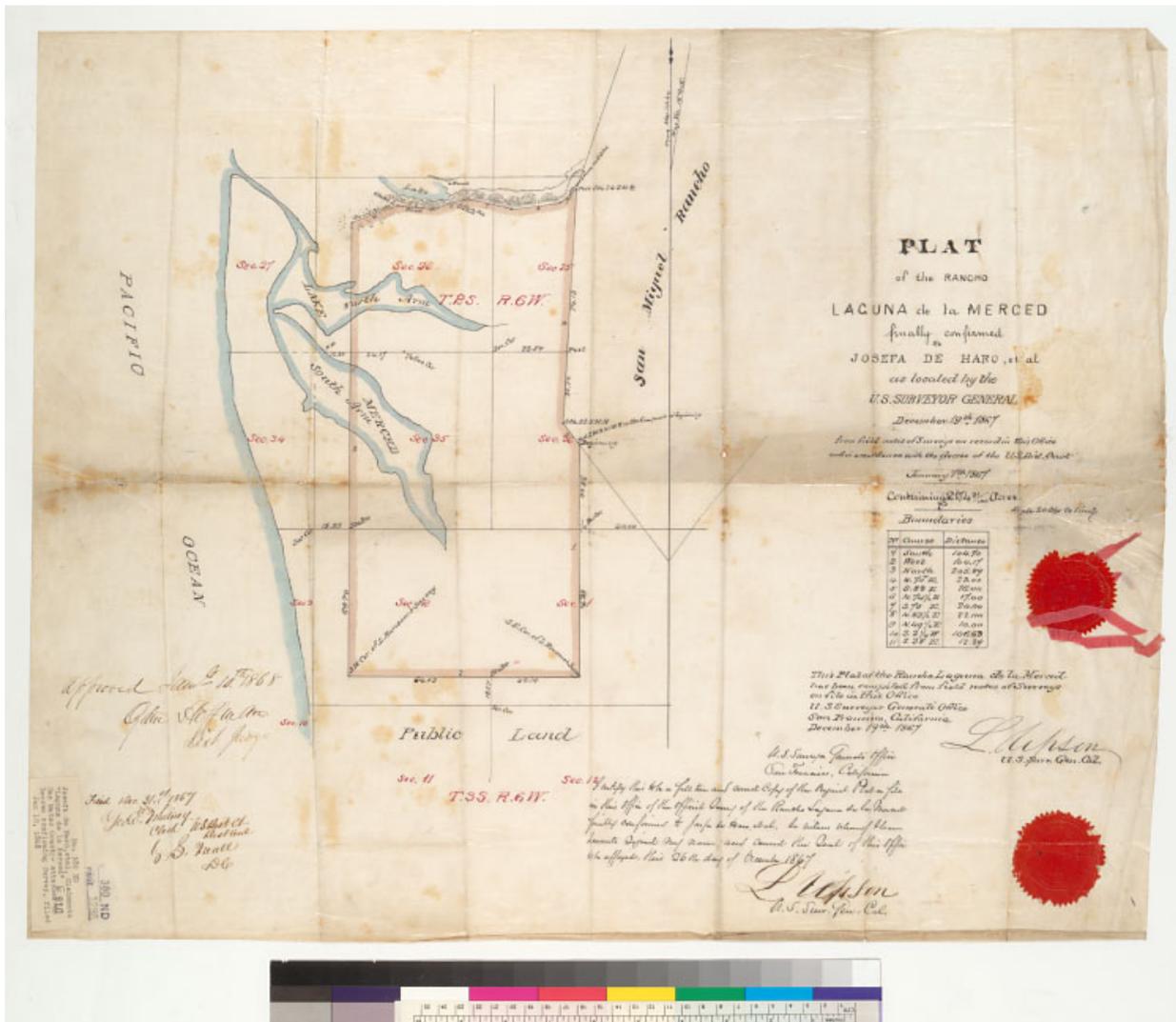
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<http://www.oac.cdlib.org/ark:/13030/hb7h4nb3r2/?order=2&brand=oac4>(accessed 2013 05 230)

EXHIBIT C



▶ Plat of the Rancho Laguna de la Merced, finally confirmed to Josefa de Haro et al. : [San Francisco, Cal.] / as located by the U.S. Surveyor General [verso]

<http://content.cdlib.org/ark:/13030/hb0n39n5q7/?order=3> (accessed 2013 05 30)



Explanation

- Soil sample location
- 2010 background soil sample location
- ▲ 2010 background sediment sample location
- ✱ 2010 background surface water sample location
- ⊙ 2005 background soil sample (URS)
- ⊕ 1993 background sediment sample (E&E)
- 1993 background soil sample (E&E)

BACKGROUND SAMPLE LOCATIONS
 Pacific Rod and Gun Club
 San Francisco, California

By: CD Date: 07/15/2011 Project No. 15280.000

AMEC Geomatrix

Figure **5**



Approx. W boundary
of Rancho Laguna de la
Merced, per "Map 163"
State of California owns
bed of Lake to West
of this line, up to median
high water mark at time
of Statehood.