

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for the

**JAMES PETALUMA PROPERTY LLC
JAMES PROPERTY POND IMPROVEMENTS PROJECT**

SOURCE: Unnamed Tributary to San Antonio Creek

COUNTY: Sonoma

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

I. Background and Project Description

James Petaluma Property LLC (Applicant) filed a water quality certification (certification) application with the State Water Resources Control Board (State Water Board) for the James Property Pond Improvements Project (Project) on June 24, 2014. The Project is located in Petaluma within the Petaluma River watershed (Figure 1). The Applicant owns and operates a pond that was constructed in the 1950s to collect sheet and minor channel flows from an unnamed tributary that discharges to San Antonio Creek. The pond's maximum capacity is 25.4 acre-feet (AF). The proposed Project is to decrease the pond's maximum storage capacity to 20 AF by reducing the pond's spillway height by 1.6 feet. Following completion of the Project the Applicant plans to file a Water Right Application for a Small Irrigation Use Registration with the State Water Board's Division of Water Rights.

The pond's spillway will be modified to extend 46 feet downstream from the pond. The modified spillway will be 8 feet wide at the pond's exit and narrow to 3 feet at its downstream end. The outlet sides of the spillway will be 18 inches tall and 2 feet wide. Two concrete cutoff walls will be constructed to control pond elevation and measure outflow. The concrete cutoff walls will be 12 inches thick and extend 12 feet across the channel.

Roughly 400 cubic yards of material (e.g., soil and concrete) will be excavated during spillway modification with 108 cubic yards within Waters of the United States. The excavation area is estimated to be 45 feet wide and 140 feet long (0.14 acres). A track mounted excavator will load material into trucks for transport to different areas of the Applicant's property for reuse and/or storage. Appropriate erosion control measures will be implemented for material storage. Approximately 8 cubic yards of fill rock will extend 46 feet downstream and 3 feet upslope of the stream sides to protect the spillway and stabilize the stream channel during high flows.

The staging area will be located on the existing driveway and pond access road. Work will be done in the late summer/early fall when the pond elevation naturally recedes away from the spillway and the downstream ephemeral stream is dry. No in-water work will be necessary. The total Project area is 0.3 acres.

II. Regulatory Authority

Water Quality Certification and Related Authorities

The Federal Clean Water Act (CWA) (33 U.S.C. §§ 1251–1387) was enacted “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” (33 U.S.C. § 1251(a).) Section 101 of the CWA (33 U.S.C. § 1251 (g)) requires federal agencies to “co-operate with the State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.”

Section 401 of the CWA (33 U.S.C. §1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the CWA, including water quality standards and implementation plans promulgated pursuant to section 303 of the CWA (33 U.S.C. § 1313). CWA section 401 directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the CWA and with any other appropriate requirements of state law. Section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project. The State Water Board is designated as the state water pollution control agency for all purposes stated in the CWA and any other federal act. (Wat. Code, § 13160.) The State Water Board’s Executive Director has been delegated the authority to issue a decision on a water quality certification application. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

The State Water Board received the Applicant’s certification application on June 24, 2014. On July 23, 2014, the State Water Board provided notice of receipt of a complete application for the Project to applicable parties pursuant to California Code of Regulations, title 23, section 3835, subdivision (c). On July 18, 2014, the State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 by posting information describing the Project on the State Water Board’s website, and by sending notification of receipt of the application to a list of parties interested in State Water Board actions on certifications. No comments were received.

The State Water Board forwarded the portions of the application that have the potential to cause adverse water quality impacts other than specific impacts resulting from alterations to instream flows to the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Regional Board) on September 17, 2014. (See Cal. Code Regs., tit. 23, sec. 3855, subd. (b)(2)(B).) San Francisco Bay Regional Board staff responded with comments on September 23, 2014, which have been incorporated into this water quality certification.

The United States Army Corps of Engineers (ACOE) has determined a Nationwide Permit (NWP) No. 18 under section 404 of the CWA is required for the Project. The ACOE identification number for the Project is SPN 2013-00349N. The California Department of Fish and Wildlife (CDFW) determined that a Streambed Alteration Agreement is required.

Water Quality Control Plans and Related Authorities

The California Regional Water Quality Control Boards (Regional Water Boards) adopt, and the State Water Board approves, water quality control plans (basin plans) for each watershed basin in California. The basin plans designate the beneficial uses of waters within each watershed basin, and water quality objectives designed to protect those uses pursuant to Section 303 of the CWA. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans and state and federal anti-degradation requirements constitute California's water quality standards.

The San Francisco Bay Regional Board adopted, and the State Water Board and the United States Environmental Protection Agency approved the *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan). The Basin Plan identifies existing beneficial uses for San Antonio Creek as: cold freshwater habitat; warm freshwater habitat; wildlife habitat; water contact recreation; and noncontact water recreation. In addition, freshwater migration and fish spawning are identified as potential beneficial uses.

In 1998, the State Water Board listed San Antonio Creek on the CWA Section 303(d) list. San Antonio Creek is impaired for diazinon, which is mainly contributed by runoff from urban areas, stormwater, and sewer systems. Since 2007 the San Francisco Bay Regional Board has been implementing the Urban Creeks Pesticide Toxicity Total Maximum Daily Load (TMDL) Project to address diazinon and other pesticides in urban creeks throughout the San Francisco Bay Area. The Project will not contribute diazinon to San Antonio Creek.

The State Water Board has reviewed and considered the plans and Project description provided by the Applicant. Further, the State Water Board has considered the Basin Plan, existing water quality conditions and Project-related controllable factors.

California Environmental Quality Act

CDFW is the lead agency for the purpose of California Environmental Quality Act (CEQA) (Pub. Resources Code compliance § 21000 et seq.) compliance. The State Water Board is a responsible agency under CEQA. CDFW issued a Notice of Exemption (NOE) for a Categorical Exemption under 15301 (Class 1 – Existing Facilities) of the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). CDFW filed the NOE with the Office of Research and Planning¹ on September 5, 2014. The State Water Board considered the NOE in connection with the issuance of this water quality certification and, based on its independent judgment, agrees that the Project meets the Class 1 exemption. The State Water Board finds that there is no substantial evidence in the record that the Project will have a significant effect on the environment. The State Water Board will file a NOE within five days of issuance of this water quality certification.

All documents and other information that constitute the public record for this Project shall be maintained by the State Water Board's Division of Water Rights and shall be available for public review at the following address: State Water Board, Division of Water Rights, 1001 I Street, Sacramento, CA 95814.

¹ State Clearinghouse No. 2014098099.

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER RESOURCES CONTROL BOARD CERTIFIES THAT THE JAMES PROPERTY POND IMPROVEMENTS PROJECT will comply with sections 301, 302, 303, 306, and 307 of the CWA, and with applicable provisions of State law, if the James Petaluma Property LLC complies with the following terms and conditions during the Project activities certified herein. This discharge is also regulated pursuant to State Water Board Order No. 2003-0017-DWQ which authorizes this water quality certification to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).

1. State Water Board staff shall be notified one week prior to the commencement of ground disturbing activities. Upon request, a construction schedule shall be provided to agency staff.
2. This certification requires compliance with all applicable requirements of the Basin Plan. If at any time an unauthorized discharge to surface waters (including rivers or streams) occurs or monitoring indicates that the Project has or could soon be in violation with water quality objectives, the associated Project activities shall cease immediately and the Deputy Director for Water Rights (Deputy Director) and the San Francisco Bay Regional Board Executive Officer (Executive Officer) shall be notified. Associated activities shall not resume without approval from the Deputy Director.
3. All best management practices (BMPs), erosion and sediment control discharge measures, California red-legged frog (CRLF) avoidance measures, and general site measures described in the application for water quality certification and its supplements are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification, the Applicant shall comply with all measures described in the application for water quality certification and its supplements.
4. Ground disturbing construction activities shall be limited to the dry season, to avoid potential adult CRLF dispersal events. If CRLF are observed in the Project site the Applicant shall cease work and shall not resume work until approval is granted by CDFW and the United States Fish and Wildlife Service (USFWS). Upon request from the Applicant and concurrence with USFWS and CDFW, the work season may be modified upon Deputy Director approval.
5. The USFWS approved biologist shall be onsite during all ground disturbing and related ground disturbing activities. Preconstruction surveys for CRLF will be conducted at the Project site preceding any construction activity (including grading and equipment staging) that occurs in CRLF habitat or any activity that may result in take of CRLF. A USFWS approved biologist shall search the Project site for CRLF. If CRLF are found within the Project area, construction will not begin until all CRLF individuals are relocated outside of the Project area to a location where the CRLF individuals will not reasonably reenter the Project area until construction activities are complete. If the USFWS approved biologist presents a stop work order due to take of any listed species, the Deputy Director shall be notified, via email or telephone, within one working day. Work shall not resume without approval from the Deputy Director.

6. Exclusion fencing shall be installed around the construction site and staging areas to exclude CRFL from construction activities. No Project related activities shall occur outside the exclusion fencing.
7. The fueling and maintenance of vehicles and other equipment shall occur at least 20 meters (66 feet) from any riparian habitat or water body. Additionally, any maintenance or refueling of vehicles or equipment occurring on-site shall be done in a designated area with secondary containment, located away from drainage courses to prevent the runoff of stormwater and the runoff of spills. All equipment using gas, oil, hydraulic fluid or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (motors, pumps, generators, etc.) and vehicles not in use shall be positioned over drip pans or other types of containment. Spill and containment equipment (oil spill booms, sorbent pads, etc.) shall be maintained onsite at all locations where such equipment is used or staged.
8. Any slopes and stream banks exposed due to the Project must be stabilized immediately upon completion of construction. Any exposed slopes and stream banks shall be restored to pre-existing conditions following construction.
9. Sediment and erosion control measures shall be implemented and in place at the commencement of, during and after any ground clearing activities, excavation, or any other Project activities that could result in erosion or sediment discharges to surface waters. Erosion control blankets, liners with berms, and/or other sediment control measures shall be used for any stockpile of excavated material, including the approximately 400 cubic yards of material to be excavated as part of the Project, to control runoff resulting from precipitation, and prevent material from contacting or entering surface waters.
10. Turbidity increases associated with Project activities shall not exceed the water quality objectives for turbidity as documented in the Basin Plan. Turbidity levels are defined in nephelometric turbidity units (NTUs). According to the Basin Plan, turbidity levels shall not increase by more than 10 percent where natural turbidity is greater than 50 NTU.

No in-water work is anticipated. However, if in-water work occurs, the Applicant shall monitor turbidity levels 50 feet upstream of Project activities (i.e., natural background) and 500 feet downstream of the Project. Turbidity monitoring shall occur at least hourly during Project in-water-work. If grab sample results indicate that turbidity levels exceed threshold levels, remedial actions will be implemented to reduce and maintain turbidity at or below threshold levels 500 feet downstream of the in-water-work. Potential remedial actions include halting or slowing in-water-work and implementation of additional BMPs until turbidity levels are at or below threshold levels. The Deputy Director and the Executive Officer shall be notified promptly and no later than 24 hours after the monitoring results indicate an unauthorized increase in turbidity.

If performed (i.e., in-water work occurs), turbidity monitoring results shall be reported to the Deputy Director within two weeks of initiation of monitoring and every two weeks thereafter for the remainder of the monitoring period.

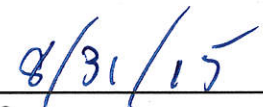
11. Construction material, debris, spoils, soil, silt, sand, bark, slash, sawdust, rubbish, steel, other organic or earthen material, or any other substances which could impact water quality or be hazardous to aquatic life resulting from Project related activities shall be prevented from entering surface waters.
12. All wash water shall be contained and disposed of in compliance with State and local laws, ordinances, and regulations.
13. All equipment must be washed prior to transport to the Project site and must be free of sediment, debris and foreign matter.
14. All imported riprap, rocks, and gravels used for construction shall be pre-washed.
15. No unset cement, concrete, grout, damaged concrete, concrete spoils, or wash water used to clean concrete surfaces shall contact or enter surface waters. No leachate from truck or grout mixer cleaning stations shall percolate into Project area soils. Cleaning of concrete trucks or grout mixers shall be performed in designated washout areas of sufficient size to completely contain all liquid and waste concrete or grout generated during washout procedures. Hardened concrete or grout shall be disposed of at an authorized landfill, in compliance with State and local laws, ordinances and regulations.
16. All construction debris and trash shall be contained and regularly removed from the work area to the staging area during construction activities. Upon completion, all Project-generated debris, building materials, waste, and trash shall be removed from the Project site for disposal at an authorized landfill or other disposal site in compliance with State and local laws, ordinances, and regulations.
17. Onsite containment for storage of chemicals classified as hazardous shall include secondary containment and appropriate management as specified in California Code of Regulations, title 27, section 20320.
18. A copy of this certification shall be provided to contractors and subcontractors conducting the construction work, and copies shall remain in their possession at the Project site. The Applicant shall be responsible for work conducted by its contractors and subcontractors.
19. The State Water Board may add to or modify the conditions of this certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the CWA.
20. Notwithstanding any more specific conditions in this certification, the Project shall be operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the CWA. The Applicant must take all reasonable measures to protect the beneficial uses of waters of San Antonio Creek and its tributaries.
21. This certification does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (CESA) (Fish & Game Code, §§ 2050–2097) or the federal Endangered Species Act (ESA) (16

U.S.C. §§ 1531–1544). If a “take” will result from any act authorized under this certification or water rights held by the Applicant, the Applicant must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Applicant is responsible for meeting all applicable requirements of CESA and the federal ESA for the Project authorized under this certification.

22. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation is subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the CWA, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
23. In response to a suspected violation of any condition of this certification, the State Water Board or San Francisco Bay Regional Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports (Wat. Code §§ 1051, 13165, 13267 & 13383). The State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
24. No construction shall commence until all necessary federal, state, and local approvals have been obtained.
25. Any requirement in this water quality certification that refers to an agency whose authorities and responsibilities are transferred to or subsumed by another state or federal agency, will apply equally to the successor agency.
26. The Applicant must submit any changes to the Project, which would have a significant or material effect on the findings, conclusions, or conditions of this certification, to the State Water Board for prior review and written approval. If the State Water Board is not notified of a significant change to the Project, it will be considered a violation of this certification.
27. The Applicant must provide State Water Board and Regional Water Board staff access to Project sites to document compliance with this certification.
28. The State Water Board shall provide notice and an opportunity to be heard in exercising its authority to add to or modify any of the conditions of this certification.
29. This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).

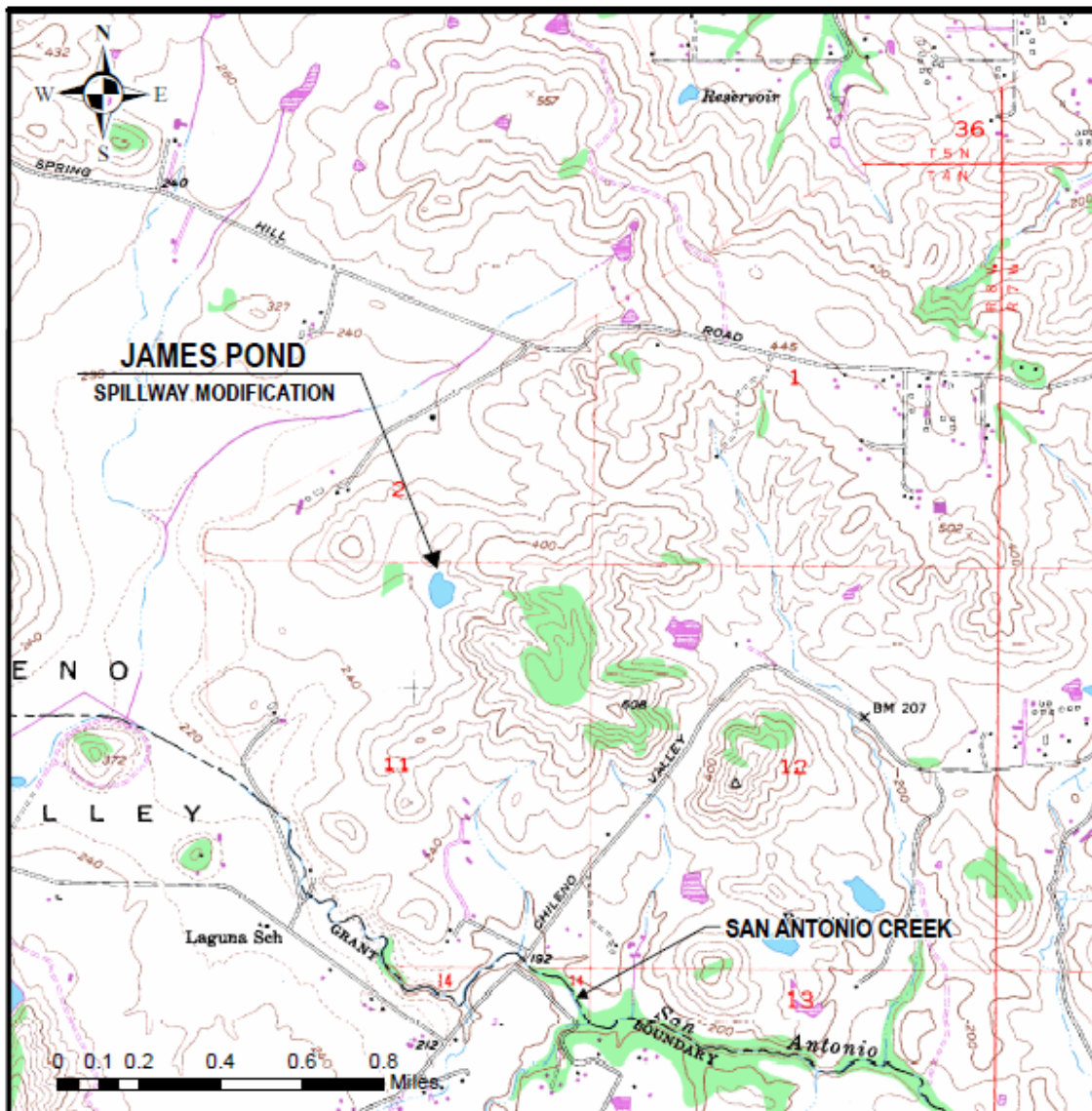
30. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
31. Nothing in this certification shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 claims. The State Water Board has separate authority under the Water Code to investigate and take enforcement action if necessary to prevent any unauthorized or threatened unauthorized diversions of water.
32. Certification is conditioned upon total payment of any fee required under title 23, division 3, chapter 28 of the California Code of Regulations and owed by the Applicant.


Thomas Howard
Executive Director


Date

Attachment: Figure 1 – Project Map

James Property Pond Improvements Project
 Water Quality Certification



APPLICANT JAMES PETALUMA PROPERTY LLC SOURCE UNNAMED STREAM TRIBUTARY TO SAN ANTONIO CREEK POINT OF DIVERSION WITHIN NE 1/4 OF NW 1/4 SECTION 11, T4N, R8W, MDB&M		STATE OF CALIFORNIA CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY STATE WATER RESOURCES CONTROL BOARD DIVISION OF WATER RIGHTS FIGURE 1 - PROJECT MAP WATER QUALITY CERTIFICATION	
COUNTY OF SONOMA STATEMENT No. S022891 SCALE: 1:24,000	DATE: 09-10-2014	DRAWN: APT	CHECKED: JHW

Note: This map does not constitute a public land survey as defined by California Business & Professions Code section 8726. It has been prepared for descriptive purposes only.