

## Central Valley Regional Water Quality Control Board

4 August 2016

Michael Gallo  
5Gs Corporation; Upside Properties, LP; and Fahrens Creek, LLC  
P.O. Box 775  
Atwater, CA 95301

### **CLEAN WATER ACT §401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS FOR THE YOSEMITE LAKE ESTATES DEVELOPMENT PROJECT, WDID#5B24CR00037, MERCED COUNTY**

This Order responds to the 28 February 2012 application, the 12 September 2013 revised application, and the 29 June 2016 application updates submitted by 5Gs Corporation; Upside Properties, LP; and Fahrens Creek, LLC (collectively hereinafter referred to as Applicant) for a Clean Water Act § 401 Water Quality Certification of a residential development project permanently impacting 9.40 acres of waters of the United States.

This Order serves as certification of the subject Project permitted by the United States Army Corps of Engineers' Individual Permit under § 401 of the Clean Water Act, and a Waste Discharge Requirement under the Porter-Cologne Water Quality Control Act and State Water Resources Control Board Order 2003-0017-DWQ.

#### **WATER QUALITY CERTIFICATION STANDARD CONDITIONS:**

1. This Certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to § 13330 of the California Water Code and § 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This Certification is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR § 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action shall be conditioned upon total payment of the full fee required under 23 CCR § 3860.
4. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law and § 401 (d) of the federal Clean Water Act. 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 this Certification.

#### **WATER QUALITY CERTIFICATION GENERAL CONDITIONS:**

1. Certification is valid for the duration of the Yosemite Lake Estates Development Project (Project) described in the attached "Project Information Sheet." This Certification is no longer valid if the

Project (as summarized in the "Project Information Sheet" and described in the water quality certification application, the revised application, and additional information submitted on 28 February 2012, 12 September 2013, and 29 June 2016) is modified, or coverage under the project permit issued by the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act has expired.

2. The Applicant shall provide a Notice of Completion (NOC) **no later than eight weeks** after the completion of Project mitigation construction in the Yosemite Lake Conservation Area, after the completion of construction and rehabilitation in the Fahrens Creek Riparian floodplain, and after completion of construction within the development Project. The NOCs shall demonstrate that the Project has been carried out in accordance with the Project description in the Certification and in any approved amendments. The NOCs shall include a map of the Project location(s), including final boundaries of any on-site restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation.
3. All reports, notices, or other documents required by this Certification or requested by the Central Valley Water Board shall be signed by a person described below or by a duly authorized representative of that person.
  - a. For a corporation: by a responsible corporate officer such as (1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; (2) any other person who performs similar policy or decision-making functions for the corporation; or (3) the manager of one or more manufacturing, production, or operating facilities if *authority* to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - b. For a partnership or sole proprietorship: by a general partner or the proprietor.
  - c. For a municipality, State, federal, or other public agency: by either a principal executive officer or ranking elected official.
4. Any person signing a document under General Condition No. 3 shall make the following certification, whether written or implied:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### **ADDITIONAL TECHNICALLY CONDITIONED CERTIFICATION CONDITIONS:**

In addition to the standard and general conditions above, the Applicant shall satisfy the following:

1. The Applicant shall notify the Central Valley Water Board in writing **seven days** prior to beginning any in-water activities.
2. Except for activities permitted by the U.S. Army Corps of Engineers under § 404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. All areas disturbed by Project activities shall be protected from washout or erosion.

4. The Applicant shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed Project shall be adequately informed and trained regarding the conditions of this Certification.
5. An effective combination of erosion and sediment control Best Management Practices (BMPs) shall be implemented and adequately working during all phases of construction.
6. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.
7. The Applicant shall perform surface water sampling: 1) when performing any in-water work; 2) in the event that Project activities result in any materials reaching surface waters; 3) when any activities result in the creation of a visible plume in surface waters or; 4) when implementing a diversion plan. Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136; where no methods are specified for a given pollutant, the method shall be approved by Central Valley Water Board staff. The following monitoring shall be conducted immediately upstream out of the influence of the Project and approximately 300 feet downstream of the active work area. Sampling results shall be submitted to this office by the first day of the second month following sampling. The sampling frequency and monitoring locations may be modified for certain projects with written permission from the Central Valley Water Board Executive Officer.

**If no monitoring is conducted**, the Applicant shall submit a written statement to the Central Valley Water Board Contact indicated in the Certification stating, "No monitoring was required." with the Notice of Completion.

Parameter	Unit	Type of Sample	Frequency of Sample
Turbidity	NTU	Grab	Every 4 hours during in-water work
Settleable Material	ml/L	Grab	Same as above
pH	S.U.	Grab	Daily during concrete activity
Visible construction related pollutants	Observation	Visible Inspections	Continuous throughout the construction period

8. Activities shall not cause in surface waters:

- (a) where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTUs;
- (b) where natural turbidity is between 1 and 5 NTUs, increases exceeding 1 NTU;
- (c) where natural turbidity is between 5 and 50 NTUs, increases exceeding 20 percent;
- (d) where natural turbidity is between 50 and 100 NTUs, increases exceeding 10 NTUs;
- (e) where natural turbidity is greater than 100 NTUs, increases exceeding 10 percent.

In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be used with prior permission of the Central Valley Water Board Executive Officer.

9. Activities shall not cause settleable material to exceed 0.1 ml/L in surface waters as measured in surface waters downstream from the Project.
10. Activities shall not cause the pH in surface waters to be depressed below 6.5 nor raised above 8.5.
11. The discharge of petroleum products or other excavated materials to surface water is prohibited. Activities shall not cause visible oil, grease, or foam in the work area or downstream. The Applicant shall notify the Central Valley Water Board immediately of any spill of petroleum products or other organic or earthen materials.
12. Prior to arrival at the project site and prior to leaving the project site, construction equipment that may contain invasive plants and/or seeds shall be cleaned to reduce the spreading of noxious weeds.
13. The Applicant shall notify the Central Valley Water Board immediately if any of the above conditions are violated, along with a description of measures it is taking to remedy the violation.
14. The Applicant shall comply with all California Department of Fish and Game Code § 1600 requirements for the Project.
15. The Applicant must obtain coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activities issued by the State Water Resources Control Board for any project disturbing an area of one acre or greater.
16. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law and § 401 (d) of the federal Clean Water Act. 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 this Certification.
17. If the Applicant or a duly authorized representative of the Applicant fails or refuses to furnish technical or monitoring reports, as required under this Certification, or falsifies any information provided in the monitoring reports, the Applicant will be subject to civil liability, for each day of violation, or criminal liability.
18. In response to a suspected violation of any condition of this Certification, the Central Valley Water Board may require the Applicant to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from them.
19. The Applicant shall allow staff of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the Project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the Project.
20. The Applicant shall reestablish 5.85 acres of vernal pool wetlands, rehabilitate 10.80 acres of vernal marsh, and enhance 15.37 acres of vernal pool wetlands, according to the Habitat Development Plan – Yosemite Lake Conservation Area (HDP), dated June 6, 2016 and in the Fahrens Creek Riparian Mitigation and Monitoring Plan (Fahrens Creek MMP), dated February 2016.

21. **Annually, by 31 December**, the Applicant shall submit to the Central Valley Water Board monitoring reports required by the HDP and the Fahrens Creek MMP, summarizing the results of the monitoring efforts.

**CENTRAL VALLEY WATER BOARD CONTACT PERSON:**

Debra Mahnke, Water Resource Control Engineer  
1685 E Street  
Fresno, CA 93706  
(559) 445-6281  
debra.mahnke@waterboards.ca.gov

**WATER QUALITY CERTIFICATION:**

I hereby issue an order certifying that the proposed discharge from the 5Gs Corporation; Upside Properties, LP; and Fahrens Creek, LLC Yosemite Lake Estates Development Project, WDID 5B24CR00037, will comply with the applicable provisions of § 301 ("Effluent Limitations"), § 302 ("Water Quality Related Effluent Limitations"), § 303 ("Water Quality Standards and Implementation Plans"), § 306 ("National Standards of Performance"), and § 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification."

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's project description, the attached "Project Information Sheet," and the Applicant's water quality certification application; and (b) compliance with all applicable requirements of the Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised April 2016.

Any person aggrieved by this action may petition the State Water Resources Control Board to review the action in accordance with California Water Code § 13320 and California Code of Regulations, title 23, § 2050 and following. The State Water Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date of this action, except that if the thirtieth day following the date of this action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Resources Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

  
for Pamela C. Creedon  
Executive Officer

Enclosure: Water Quality Order No. 2003-0017 DWQ  
Attachment: Project Information Sheet

cc: See following page

cc: Jason Brush, Supervisor, Wetlands Regulatory Office, U.S. Environmental Protection Agency,  
Region 9, San Francisco (email)  
Kate Dadey, Sacramento South Branch Chief, Regulatory Unit, Department of the Army, Corps  
of Engineers, Sacramento  
Bill Orme, Water Quality Certification Unit Chief, Division of Water Quality, State Water  
Resources Control Board, Sacramento (email)  
Julie Vance, Regional Manager, San Joaquin Valley-Southern Sierra Region, California  
Department of Fish and Wildlife, Fresno  
George Molnar, LSA Associates, 157 Park Place, Point Richmond, CA 94801

## PROJECT INFORMATION SHEET

**Application Date:** 28 February 2012 application, 12 September 2013 revised application, 29 June 2016 application updates

**Applicant:** 5Gs Corporation; Upside Properties, LP; and Fahrens Creek, LLC

**Applicant Representatives:** Michael Gallo, 5Gs Corporation  
George Molnar, LSA Associates

**Project Name:** Yosemite Lake Estates Development Project

**Application Number:** WDID 5B24CR00037

**Type of Project:** Residential Development

**Project Location:** Old Lake Road at Golf Road, Merced  
Section 7, Township 11 South, Range 21 East, MDB&M.  
Latitude: 37.37739° and Longitude: -120.44552

**Project Duration:** The Project is tentatively scheduled to begin in summer of 2016. The schedule may be adjusted to avoid or minimize environmental impacts.

**County:** Merced

**Receiving Water:** Fahrens Creek, Main Canal, unnamed wetlands, San Joaquin River Hydrologic Basin, San Joaquin Valley Floor Hydrologic Unit #535.80, Merced HA

**Water Body Type:** Creek, canal, wetlands, ponds, and drainage ditches

**Designated Beneficial Uses:** The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised April 2016 (Basin Plan), has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include, but are not limited to: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND); Hydropower Generation (POW); Groundwater Recharge (GWR); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Preservation of Biological Habitats of Special Significance (BIOL); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). A comprehensive and specific list of the beneficial uses applicable for the project area can be found at [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml).

**Project Description:** The Project Area is 765 acres, consisting of a 368 acre site located west of the Merced Irrigation District (MID) Main Canal to be developed for the Yosemite Lake Estates Project ("Development Site") and a 397 acre site east of the MID Main Canal reserved for project mitigation that will include vernal pool construction ("Conservation Area"). The Development Site is composed of the following: 1) the Project development footprint totaling approximately 334 acres, including 9.40 acres of jurisdictional waters impacts; and 2) preserved habitat totaling approximately 28 acres, including 15.08 acres of preserved habitat along the Fahrens Creek corridor and 13.35 acres of avoided land within the MID Main Canal levee setback areas.

Additionally, the Project includes construction of an elevated road crossing of the Fahrens Creek channel and floodplain consisting of installation of a 64-foot long free span bottomless arch culvert with associated concrete wing walls over which an elevated roadway with sloping shoulders will be placed.

The arch culvert will be constructed using a pre-cast bridge system that spans the low flow channel of the creek.

**Preliminary Water Quality Concerns:** Construction activities may impact surface waters with increased turbidity and settleable matter.

**Proposed Mitigation to Address Concerns:** Best management practices will be implemented to protect the Main Canal and Fahrens Creek from construction impact. Additionally, development setbacks will be established along the Main Canal and Fahrens Creek to protect surface water quality.

**Fill/Excavation Area:** Approximately 9.40 acres of wetlands and other waters will be permanently impacted by placement of fill and 0.19 acres of creek bed will be temporarily impacted by construction, as summarized in Table A below.

**Table A: Summary of Impacts and Mitigation by Wetland/Other Water Type**

Jurisdictional Habitat	Type	Present at Project Site (acres)	Directly Impacted (acres)	Temporary Impact (acres)
Vernal Pools and Swales	Wetland	24.69	5.15	0.00
Seasonal Wetlands in Pasture and Agricultural	Wetland	2.36	2.36	0.00
Canal Seeps	Wetland	0.91	0.01	0.00
Canal Marshes and Lagoons	Wetland	39.38	0.00	0.00
Natural Seeps	Wetland	0.47	0.00	0.00
Fahrens Creek Floodplain Swales	Wetland	1.27	0.57	0.00
<b>Wetland Total</b>		<b>69.08</b>	<b>8.09</b>	<b>0.00</b>
Fahrens Creek	Other Water	1.25 (1,512 l.f.)	0.00 (0 l.f.)	0.19 (64 l.f.)*
Stock Ponds	Other Water	0.50	0.50	0.00
Drainage/Irrigation Ditches	Other Water	1.28	0.81	0.00
<b>Other Water Total</b>		<b>3.03</b>	<b>1.31</b>	<b>0.19</b>
<b>Wetland And Other Water Total</b>		<b>72.11</b>	<b>9.40</b>	<b>0.19</b>

\* Temporary disturbance to channel bank during installation of bottomless spanning arch culvert.

**Dredge Volume:** None

**U.S. Army Corps of Engineers Permit Number:** Individual Permit SPK-1991-01139

**Department of Fish and Wildlife Streambed Alteration Agreement:** The Applicant applied for a Streambed Alteration Agreement on 11 March 2016.

**Status of CEQA Compliance:**

Merced County approved a Environmental Impact Report on 27 April 2004, and issued a Notice of Determination (State Clearinghouse Number SCH 1999011011).

As a Responsible Agency under California Environmental Quality Act (CEQA), the Central Valley Water Board reviewed the Environmental Impact Report and found that the Project impacts to water quality were adequately addressed. Mitigation for impacts to water quality is discussed in the “Proposed Mitigation to Address Concerns” section above and the “Compensatory Mitigation” section below.

**Compensatory Mitigation:** The applicant has proposed to record a conservation easement over 397.5 acres of land to the east of the MID Canal, 343.75 acres of which will be to minimize the effects of the action. An additional 28.60 acres of lagoon/migratory water bird habitat will also be preserved under the conservation easement for this site, as well as 25.15 acres of re-established vernal pools that are intended to address mitigation requirements for the University of California Merced (UC Merced). Mitigation is summarized in Table B below.

**Table B: Summary of Proposed Mitigation**

Impact Type	Impact Amount (ac.)	Proposed Mitigation	Ratio	Mitigation to be Provided (ac.)
Vernal pools and swales	2.04	Vernal pool re-establishment	2.50:1.00	5.10
	3.11	Vernal marsh rehabilitation	3.20:1.00	9.95
Seasonal Wetlands in Pasture and Agricultural	2.36	Vernal pool enhancement	4.40:1.00	10.38
Fahrens Creek Floodplain Swales and Seeps	0.32	Vernal marsh rehabilitation	2.70:1.00	0.85
	0.26	Vernal pool enhancement	4.20:1.00	1.18
Fahrens Creek	0.00	--	--	--
Ditch	0.81	Vernal pool enhancement	4.70:1.00	3.81
Stock Pond	0.50	Vernal pool re-establishment	1.50:1.00	0.75
<b>Total Mitigation:</b>	<b>Vernal pool re-establishment</b>			<b>5.85</b>
	<b>Vernal marsh rehabilitation</b>			<b>10.80</b>
	<b>Vernal pool enhancement</b>			<b>15.37</b>
<b>Grand Total:</b>				<b>32.02</b>

**Application Fee Provided:** Total fees of \$54,375 have been submitted as required by 23 CCR §3833(b)(3)(A) and by 23 CCR §2200(e).