

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

STAFF SUMMARY REPORT (Shin-Roei Lee)  
MEETING DATE: August 13, 2014

**ITEM:** 7

**SUBJECT:** **San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, Santa Clara and San Mateo Counties** – Workshop on Pending Water Quality Certification Application for Flood Protection Project

**CHRONOLOGY:** The Board has not previously considered this item.

**DISCUSSION:** This item is a workshop to present and take testimony on the recent application to the Board for a project to provide flood protection on San Francisquito Creek. The San Francisquito Creek Joint Powers Authority (JPA) is an independent regional government agency established by the San Mateo County Flood Control District, the Santa Clara Valley Water District, and the cities of East Palo Alto, Menlo Park, and Palo Alto, who share the San Francisquito Creek watershed and its floodplain. The JPA implements flood management, ecosystem restoration, and recreational enhancement projects throughout the San Francisquito Creek watershed.

The JPA proposes to improve flood protection and enhance ecological habitat and recreational use along 7,500 linear feet (263 acres) of the lower reach of San Francisquito Creek from Highway 101 to the mouth of San Francisco Bay (Project). The current design of the Project includes constructing floodwalls in the upper portion of this reach, modifying or setting back the reach's existing levees, installing erosion protection at select locations, building a boardwalk extension to the Friendship Bridge across the creek to accommodate the widened channel, and planting tidal marsh vegetation. As such, the JPA has applied for a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers and a related Clean Water Act section 401 water quality certification from the Water Board for the Project. The JPA also needs permits or approvals from the California Department of Fish and Wildlife, the San Francisco Bay Conservation and Development Commission, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

The JPA initially applied to the Water Board for certification of the Project in March 2013. That application included a project design that would potentially have had significant impacts to endangered species habitat, including California Clapper Rail habitat. We denied the application in February 2014 (necessitated by a statutory deadline) after several iterations of design alternatives were unsuccessful at reducing impacts. We have continued working with the JPA and the other agencies to identify a design that provides the least environmentally damaging practicable alternative that will achieve the Project's goals. The JPA reapplied for certification on July 31. As required by State regulation, we posted

the new application on August 1 on our website for 21 days for public comment. The comment period will end on August 22, 2014. The application is available at: [http://www.waterboards.ca.gov/sanfranciscobay/public\\_notices/#section401](http://www.waterboards.ca.gov/sanfranciscobay/public_notices/#section401)

### **Regulatory Framework and Legal Authority**

Under the federal Clean Water Act and the California Water Code, the Water Board regulates projects that propose to dredge and/or fill waters of the State by issuing water quality certification under Clean Water Act section 401 and/or waste discharge requirements (WDRs) under the Water Code. Certifications may be issued by the Executive Officer after the application has been posted for public comment, while WDRs are adopted by the Board after the draft WDRs have been posted for public comment. Adoption of WDRs is usually reserved for projects that are long-term, have significant impacts, and/or have significant public interest.

There are two steps involved in certifying a dredge or fill project. First, we must determine a project as proposed constitutes the least environmentally damaging practicable alternative (LEDPA) that will achieve the basic project purpose. In another words, the applicant must take all appropriate and practicable steps to *avoid and minimize* impacts to waters of the State to demonstrate the project as proposed is the LEDPA. “Practicable” means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of project purposes.

Second, we must find the project as proposed complies with State water quality standards, which include existing and potential beneficial uses specified in the Basin Plan, water quality objectives, the State’s Anti-degradation Policy, and the State’s No Net Loss Policy. Once we determine that project impacts have been minimized, we may require as part of certification compensatory mitigation for unavoidable impacts or other conditions to ensure that the project complies with State water quality standards.

This workshop provides an opportunity for all interested parties to provide verbal comments on the current application for the Project. At the workshop, we plan to describe the Project and its regulatory framework, describe the potential impacts and benefits to water quality that flood protection projects present, and, as the permitting process for the Project has been lengthy, discuss ways future flood protection project permitting can be streamlined. We expect to hear from the JPA, its member agencies, elected officials, other regulatory agencies, local interest groups, and concerned citizens. There is no action needed by the Board.

### **RECCOMEN- DATION:**

This item is to receive verbal comments on the pending application. No Board action is needed.