



**DEPARTMENT OF THE ARMY**  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102

**DEPARTMENT OF THE ARMY PERMIT  
FOR REGIONAL GENERAL PERMIT 24**

**PERMITTEE:** Mr. Jared Lewis, San Jose Water Company

**PERMIT NO.:** SPN-2016-00109

**ISSUING OFFICE:** San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

**PROJECT DESCRIPTION:**

This Department of the Army Regional General Permit (RGP) authorizes the San Jose Water Company (SJWC) to implement the September 2022 Los Gatos Creek Watershed Maintenance Program (Maintenance Program), a long-term and ongoing program directed to identify and improve facility maintenance and land management in the upper Los Gatos Creek Watershed. The Maintenance Program requires the discharge of dredged and fill materials in waters of the United States for the maintenance of reservoirs, water intakes, and associated access roads. Programmatic guidance for implementation of the Maintenance Program is outlined in the "San Jose Water Company Los Gatos Creek Watershed Maintenance Program Manual" (Maintenance Manual), dated September 2022. All work shall be completed in accordance with the Maintenance Manual unless modifications are approved in accordance with the below special conditions.

**PROJECT LOCATION:** South of the City of Los Gatos, unincorporated Santa Clara County, California

**PERMIT CONDITIONS:**

**GENERAL CONDITIONS:**

1. The time limit for completing the work authorized ends on October 15, 2028. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. For your convenience, a copy of the water quality certification or waiver is attached. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**SPECIAL CONDITIONS:**

1. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed California red-legged frog (*Rana draytonii*) shall be fully implemented as stipulated in the Biological Opinion titled "Formal Consultation on the Regional General Permit (RGP) for the Los Gatos Creek Watershed Maintenance Program in Santa Clara County, California and appending to the June 18, 2014, *Programmatic Biological Opinion for Issuance of Permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, including Authorizations Under 22 Nationwide Permits, for Projects that May Affect the Threatened California Red-Legged Frog in Nine San Francisco Bay Area Counties, California* (U.S. Army Corps of Engineers [Corps] file number 2016-00109S)" (pages 34-35), dated January 4, 2023 (enclosure 1). Project authorization under the RGP is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the NWP authorization for your project. The USFWS is, however, the authoritative federal agency for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.

2. An annual work plan shall be submitted to the Corps each year. The work plan shall include a detailed description of all proposed activities; coordinates of the project locations; any appropriate figures, including cross-sections, design details of structures to be maintained, and plan view maps for activities, as appropriate; a delineation of waters of the U.S. within each project area; the area (acres and, if applicable, linear feet) and volume (cubic yards) of each proposed discharge of dredged or fill material subject to Corps regulation pursuant to Section 404 of the Clean Water Act; additional cultural resource information if the work site was not previously inventoried; a written statement describing how each activity has been designed to avoid and minimize temporary and permanent adverse effects to waters of the U.S.; a description of anticipated permanent adverse effects to aquatic resources that each activity would cause; and the area (acres and, if applicable, linear feet) of any permanent adverse effects to aquatic resources. The SJWC shall not proceed with project activities until receiving the Corps' written notification to proceed, with the exception of small-scale sediment/debris management (up to two cubic yards of material) conducted in accordance with the Maintenance Manual. Small-scale sediment/debris management may be conducted without prior authorization and documented in the annual post-maintenance report.
3. The Corps may remove individual projects from the annual work plan if determined to be outside of the scope of the RGP or if an individual activity would delay authorization of the annual work plan.
4. In accordance with Section 7.4 of the Maintenance Manual, an annual post-maintenance report shall be submitted to the Corps by January 31 of the year following the year in which maintenance activities were completed.
5. The following monitoring shall be performed downstream of the Hooker Intake facility: Immediately following the initial sediment removal event, a topographic survey of channel cross-sections at points 300 and 600 feet downstream of the intake will be completed, and at least two photo points at these locations will be established at each location. Geomorphic conditions at the downstream data points shall be documented in the annual post-maintenance report, providing a comparison of current channel cross-sections with the initial cross-sections, relevant field observations, and photos taken at the established photo points. Should monitoring indicate vertical degradation, bank instability, channel incision, or changes in creek conditions downstream of the intake, then the applicant shall propose recommendations to alleviate concerns. After receiving approval from the Corps, the recommendations will be implemented.
6. All activities covered under the proposed RGP will adhere to the avoidance and minimization measures and BMPs outlined in Chapters 5 of the Maintenance Manual. In the event that these procedures conflict with the mandatory terms and conditions associated with incidental take of federally-listed species, the terms and conditions of the biological opinion will take precedence over the Maintenance Manual.

7. The Maintenance Manual and associated attachments may be revised or updated to incorporate maintenance techniques and methods that are more protective of the environment or to improve the Maintenance Program. Proposed minor changes shall be submitted in the annual work plan or the annual post-maintenance report for review and approval by the Corps. Substantive changes to the Maintenance Manual or the associated attachments must comply with special conditions of the RGP and be approved in writing by the Corps.
8. The SJWC shall comply with the specified project limits for each work activity as described in Chapters 4 and 5 of the Maintenance Manual.
9. Any temporary discharges of fill used to dewater or access the stream channel shall consist of materials and be placed in a manner that would not be eroded by expected high flows. Following construction, temporary fills shall be entirely removed to an area that has no waters of the U.S. and the affected areas shall be restored to pre-construction elevations.
10. Downstream flows shall be maintained at all times during project construction.
11. The removal of sediment from streams shall be limited to 200 feet in any direction from an existing structure (e.g., culverted road crossings, water intake structures). The quantity of sediment removed shall be limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built.
12. For bank stabilization projects, no material shall be placed in excess of the minimum needed for erosion protection. The bank stabilization activity shall not exceed 300 feet in length or an average of one cubic yard per running foot along the bank unless the district engineer determines that the discharge will result in no more than minimal adverse environmental effects. Additionally, the discharge of dredged or fill material into a special aquatic site for bank stabilization shall not occur unless the Corps determines that the discharge will result in no more than minimal adverse environmental effects. The use of hardscape materials shall be restricted to areas where bioengineering systems are demonstrated by the SJWC to be infeasible. Stream channelization is not authorized by this RGP.
13. Culvert repair and replacement activities shall be in-kind, meaning that there would be no more than minor deviations in the structure's configuration or fill area. Where feasible, arched culverts, or culverts with buried bottoms that allow natural substrate to be present along the length of the culvert, shall be incorporated into culvert replacement designs. Any sediment management or bank stabilization conducted in association with the culvert repair or replacement shall comply with the above limitations for these activities.
14. All material and debris generated as a result of project construction shall be removed

from the site and disposed of in an approved location outside of Corps jurisdiction. The SJWC may temporarily stockpile excavated sediment prior to disposal, provided it implements appropriate BMPs to prevent sediment from entering creeks. Onsite stockpiled materials shall be fully contained to prevent any wind or water transport. Runoff, sediment, or decant water from excavated materials shall not contact waters of the U.S.

15. To the extent practicable, excavation equipment shall work from an upland site to minimize impacts to waters of the U.S.
16. The applicant shall comply with any additional special conditions appended to the annual work plan verification under the RGP.
17. If at any time it becomes apparent that a maintenance activity results in more than minimal individual or cumulative adverse effects to waters of the U.S., the SJWC will develop a mitigation plan to avoid, minimize, rectify, reduce, and/or compensate for resource losses. Any compensatory mitigation must comply with the 2008 Mitigation Rule (33 C.F.R. § 332). The mitigation plan shall be approved by the Corps in writing prior to implementation. The RGP may be modified, suspended, or revoked if the SJWC fails to adequately avoid and minimize adverse effects to waters of the U.S.

#### **FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
  - (x) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
  - ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
  - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 4.** Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
- 5.** Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

- 6.** Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

