

Lehigh Southwest Cement Company
 Permanente Creek Restoration Project
 2013 Consent Decree and 2016 Amended Consent Decree Comparison
 September 7, 2021

Primary distinctions between Consent Decrees:

- (1) Change in aquatic species for design, away from anadromous fish species that are not present in the watershed;
- (2) Access limitations;
- (3) Project refinements due to passage of time; and
- (4) Narrowed physical scope in/around Cement Plant area – agencies sought deferral after operations cease.

June 18, 2013 Consent Decree	May 11, 2016 Consent Decree	Basis for Change
<p><u>Paragraph 33. Project objectives:</u></p> <ul style="list-style-type: none"> - Provide for sustainable anadromous fish passage and year-round habitat; - Remove mining-related fill and sediments in the bed, banks and adjacent hill slopes; - Layback creek banks and adjacent hill slopes to provide stable slopes sufficient to prevent fill from entering the creek; - Require work recommended by URS in the March 11, 2011 Permanente Creek Long-Term Restoration Plan (“URS Plan”), as proposed or as modified as described below; and - Require restoration that is no less stringent than any restoration that is approved or required by any agency, including but not limited to the Santa Clara County Planning Department and the Regional Water Board, and that is to be performed in a period of time no greater than any restoration that is approved or required by any agency, including but not limited to the Santa Clara County Planning 	<p><u>Paragraph 33. Project objectives:</u></p> <ul style="list-style-type: none"> - Increase quantity and quality of resident rainbow trout habitat through creation of pools, increased channel complexity and cover, and by fish passage through and between reaches consistent with a geomorphically stable, self-sustaining channel unless DFW Restoration Manual hydraulic design criteria cannot be met due to (1) the gradient of the reach, or (2) bedrock grade controls confirmed by the independent geologist; - Improve riparian habitat, including improvement to channel and stream bank stability and ecological/geomorphic function; - Remove mining-related fill and sediments in the bed, banks and adjacent slopes; - Remove or alter man-made structures so as to improve riparian habitat; - Layback creek banks and adjacent hill slopes to provide stable slopes sufficient to prevent fill from entering the creek; 	<ul style="list-style-type: none"> - Permanent Creek is <u>not</u> an anadromous fish stream; it cannot support anadromous fish due to natural bedrock drops and gradients exclusive (e.g., not related to) of facility operations. Most Consent Decree changes were related to this modified criteria. - Possibility of rainbow trout presence from historical stocking activities by Henry Kaiser (fishing for miners); Lehigh has since performed reconnaissance to determine

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<p>Department and the Regional Water Board.</p>	<p>- Require restoration that is no less stringent than any restoration that is approved...(same as 2013).</p>	<p>presence; Lehigh will separately submit a summarizing report. Absence of trout will not change the current design; simply ensuring accuracy of baseline condition.</p> <p>- URS report was aspirational. Once terms ground-truthed, evident that many of the provisions were unnecessary, infeasible, or not actions the regulatory agencies would permit.</p>
<p>Paragraph 34. Reaches 19-20-21 - Defendants shall provide for sustainable fish passage throughout reaches 19, 20, and 21. [Rest of paragraph describes rock step pools and creek morphology related thereto].</p>	<p>Paragraph 34. Reaches 19-20-21. -Defendants shall improve holding and rearing habitat for the resident trout population during summer low-flow periods and improve cover during high flows as follows. Defendants shall create four (4) woody debris installations within each Reach (for a total of 12 installations). Wood type, size, location and installation criteria for implementation of each installation shall comply with DFW and Regional Water Board permit or other approval requirements.</p>	<p>- Design modified to reflect lack of anadromous fish species and address aquatic species that may be present in the Creek.</p> <p>- Simplified the construction approach due to difficult access issues.</p>
<p>Paragraph 35. Reaches 17 and 18 - Defendants shall provide for sustainable fish passage [for anadromous fish] between stations</p>	<p>Paragraph 35. Reaches 17 and 18 - Defendants shall excavate and permanently export overburden</p>	<p>- Design modified to reflect lack of anadromous fish species and instead addresses aquatic</p>

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<p>138 and 119 in reaches 17-18 by excavating and permanently exporting overburden and mining-related sediment from the creek bed, banks, and from upland slopes (to the extent upland slope materials pose a risk of entering the creek), sufficient to restore creek alignment and slopes and to eliminate subsurface flow through the overburden and mining-related sediment.</p> <p>- In particular, Defendants shall layback and re-grade the north overburden slope to provide a stable slope no steeper than 2:1 (50% grade) and shall remove sufficient material to move the north toe of the slope at least 25 feet northward from its current location and elevation. Defendants shall establish a creek channel and flood plain proportionally following the conceptual modified trapezoidal cross-section as shown in Exhibit B, while preserving the flood capacity geometry set forth therein. Fish passage design approaches for all reconstructed Creek portions shall follow the California Department of Fish & Wildlife’s California Salmonid Stream Habitat Restoration Manual, 4th Edition (Vols. I-II, 2010) (“DFW Restoration Manual”), attached as Exhibit C, or its revision, and shall incorporate channel lengthening meanders and stepped pool and grade control complexes. The course of the Creek shall follow exposed bedrock, and large native boulders with sands and gravels. Defendants shall either create a berm along both reaches at the toe of the north slope, parallel to the creek (but set-back above the 100-year flood high water line) or install other structures (e.g., benches along the north slope) to prevent overburden</p>	<p>and mining-related sediment from the creek bed, banks, and from upland slopes (to the extent upland slope materials pose a risk of entering the creek), sufficient to establish approximate pre-disturbance creek alignment and slopes, and to facilitate above-grade flows, as generally depicted in the Restoration Plan Drawings. Defendants shall provide for enhanced ecological function and resident trout passage consistent with a geomorphically stable, self-sustaining channel. Defendants shall follow the hydraulic design criteria in the DFW Restoration Manual unless such criteria cannot be met due to the gradient of the reaches, or bedrock grade controls confirmed by the independent geologist as described below, in which case the stream simulation criteria in the DFW Restoration Manual, revised as necessary with off-site analogs, shall apply.</p> <p>- Defendants shall reconstruct the channel at a lowered profile and alignment within the “grading envelope” as depicted in the Restoration Plan Drawings and Field Engineering Description. Defendants shall remove all material to the lower limit of the potential design channel invert shown in the Restoration Plan Drawings, subject to the criteria in the Field Engineering Description. If Defendants assert they have excavated to bedrock prior to reaching the lowest elevation at any location within the “grading envelope,” an independent professional geologist will assess Defendants’ assertion and make the final determination of the existence and extent of any such bedrock. Pursuant to the time periods in Paragraph 46, Plaintiff and Defendants shall mutually agree to an independent professional geologist from a list of up to three candidates proposed by each party. If the Parties cannot agree they shall submit the matter</p>	<p>species that may be present in the Creek.</p> <p>- Field Engineering Guidance added to 2016 Amended Consent Decree to provide more clarity on engineering/project details, as well as “grading envelope.”</p> <p>- Restoration Plan Drawings available allowing for more specificity in the description on some items.</p> <p>- Plan for “old crusher foundation” determined during timeframe between 2013 and 2016 Consent Decrees.</p>
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<p>and sediment from entering the Creek.</p> <p>- Defendants shall remove the relic concrete structure at approximately Station 128, and evaluate the feasibility of removing the old crusher foundation at approximately Station 116. No later than June 30, 2013, Defendants shall provide to Plaintiff an evaluation of the environmental advantages and disadvantages of removing the old crusher foundation. No later than July 15, 2013, Defendants shall meet and confer with Plaintiff regarding such evaluation. Defendants shall seek agency approval to remove the old crusher foundation consistent with this Decree unless (a) the Parties otherwise agree, or (b) Defendants do not believe the old crusher foundation should be removed in which case Defendants may invoke the dispute resolution provisions of this Decree.</p>	<p>to the Court for the Court to select an appropriate independent professional geologist. Prior to the commencement of construction Defendants shall contract with the independent professional geologist to reasonably perform the work described in this Decree, and the costs of such work shall be borne by the Defendants.</p> <p>- In particular, Defendants shall layback and re-grade the north overburden slope to provide a stable slope no steeper than 2:1 (50% grade) and shall remove sufficient material to move the north toe of the slope at least 25 feet northward from its current location and elevation. In the immediate vicinity of Pond 4A and the associated interim and final treatment facilities, Defendants shall move the north toe of the slope at least 16 feet northward from its current location and elevation for a length of no more than 160 feet. Defendants shall establish an enlarged creek channel and flood plain as depicted in the Restoration Plan Drawings, the horizontal dimensions of which shall be determined by the extent of excavation within the “grading envelope.” The course of the Creek shall follow exposed bedrock, and/or large boulders, cobbles, sands and gravels not sourced from limestone-containing mine wastes or overburden. Defendants shall either create a berm along both reaches at the toe of the north slope, parallel to the creek (but set-back above the 100-year flood high water line) or install other structures (<i>e.g.</i>, benches along the north slope) to prevent overburden and sediment from entering the Creek.</p> <p>- As depicted in the Restoration Plan Drawings, Defendants shall remove the relic concrete structure, and shall cut back a portion of what is referred to as the “old concrete crusher foundation,” that currently resides, in part, within Permanente Creek, to match the natural</p>	
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	<p>direction and slope of the Creek, leaving a benign portion of the foundation buried within the Creek bank. Work on the “old concrete crusher foundation” will be performed using reasonable methods and equipment, including but not limited to small equipment with materials and spoils lowered and raised via a Constant Rate Descender or equivalent. Should Defendants encounter an unexpected condition while performing the required work on the “old concrete crusher foundation,” which precludes completion of the work prescribed herein, Defendants shall meet and confer with Plaintiff regarding said condition. If the Parties are unable to agree upon the appropriate course of action, Defendants may invoke the dispute resolution provisions of this Decree.</p>	
<p>Paragraph 36. Reaches 14, 15, 16 - Defendants shall provide for sustainable fish passage throughout Reaches 14, 15, and 16 and improve holding and rearing habitat during summer flow periods as follows. [Rest of paragraph describes rock step pools and creek morphology related thereto].</p>	<p>Paragraph 36. Reaches 14, 15, 16 -Defendants shall improve holding and rearing habitat for the resident trout population during summer low-flow periods and improve cover during high flows as follows. Defendants shall create four (4) woody debris installations within each Reach (for a total of 12 installations). Wood type, size, location and installation criteria for implementation of each installation shall comply with DFW and Regional Water Board permit or other approval requirements.</p>	<p>- Design modified to reflect lack of anadromous fish species and instead addresses aquatic species that may be present in the Creek. - Simplified the construction approach due to difficult access issues.</p>
<p>Paragraph 37. Reach 13 - -Defendants shall provide for sustainable fish passage through this reach by removing the dam infrastructure at Pond 13 and the half-culvert immediately downstream, including the removal of all concrete and metal structures and deposited sediment. The new channel and flood plain shall proportionally follow the conceptual modified trapezoidal cross-section as shown in</p>	<p>Paragraph 37. Reach 13 -Defendants shall remove the dam infrastructure at Pond 13 and the associated impounded fine sediments. Within this area Defendants shall establish a new, enlarged creek channel that includes increased channel complexity and a restored flood plain with restored vegetation as depicted in the Restoration Plan Drawings, the horizontal dimensions</p>	<p>- Design modified to reflect lack of anadromous fish species and instead addresses aquatic species that may be present in the Creek. - Restoration Plan Drawings available allowing for more specificity in the</p>

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<p>Exhibit B, while preserving the flood capacity geometry set forth therein. Fish passage design approaches for all reconstructed creek portions shall follow the DFW Restoration Manual, and shall incorporate channel lengthening meanders and stepped pool and grade control complexes. The course of the Creek shall follow exposed bedrock, and large native boulders with sands and gravels.</p>	<p>of which shall be determined by the extent of excavation within the “grading envelope.” Defendants shall provide for enhanced ecological function and resident trout passage consistent with a geomorphically stable, self-sustaining channel. Defendants shall follow the hydraulic design criteria in the DFW Restoration Manual unless such criteria cannot be met due to the gradient of the reach, or bedrock grade controls confirmed by the independent geologist, in which case the stream simulation criteria in the DFW Restoration Manual, revised as necessary with off-site analogs, shall apply.</p> <p>-Defendants shall reconstruct the channel at a lowered profile and alignment within the "grading envelope" as depicted in the Restoration Plan Drawings and incorporated Field Engineering Description. Defendants shall remove all material to the lower limit of the potential design channel invert shown in the Restoration Plan Drawings, subject to the criteria in the Field Engineering Description. If Defendants assert they have excavated to bedrock prior to reaching the lowest elevation at any location within the “grading envelope,” an independent professional geologist will assess Defendants’ assertion and make the final determination of the existence and extent of any such bedrock consistent with Paragraph 35 above. The course of the Creek shall follow exposed bedrock, and/or large boulders, cobbles, sands and gravels not sourced from limestone-containing mine wastes or overburden. A new, enlarged creek channel upstream of Pond 13 with consistent characteristics will be constructed as necessary to conform to the conditions depicted in the Restoration Plan Drawings.</p>	<p>description on some items.</p> <p>- Field Engineering Guidance added to 2016 Amended Consent Decree to provide more clarity on engineering/project details, as well as a defined “grading envelope.”</p>
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<p>Paragraph 38. Reaches 10, 11 and 12</p> <p>- Defendants shall provide for sustainable fish passage throughout reaches 10, 11 and 12 by removing all culverts, riprap, and the road on top of the creek (concrete ramp), and by sufficiently setting back the road and aggregate rock pile to provide more room for a natural streambed and banks. Defendants shall narrow the road and accompanying vehicle barrier to a reduced total width no greater than 28.5 feet at any point, measured from the toe of the inside slope to the top of the creek-side vehicle barrier. The vehicle barrier height shall not exceed 5 feet, and the slopes of the vehicle barrier shall be no less than 1.5 to 1 (67% slope). Defendants shall establish an enlarged creek channel that contains the features set forth in the conceptual modified trapezoidal cross-section as shown in Exhibit B except the south side slope shall meet existing slope conditions and the north side slope shall be modified up to a 1.5 to 1 slope. Fish passage design approaches for all reconstructed creek portions shall follow the DFW Restoration Manual, and shall incorporate channel lengthening meanders and stepped pool and grade control complexes. The course of the creek shall follow exposed bedrock, and large native boulders with sands and gravels.</p>	<p>Paragraph 38. Reaches 11 and 12</p> <p>- Defendants shall remove the half-culvert immediately downstream of Pond 13, including the removal of all artificial fill and metal structures within the valley floor in this Reach as generally depicted on the Restoration Plan Drawings. Defendants shall also remove the existing aggregate rock pile and associated rock pile infrastructure, all culverts, riprap, and the road on top of the creek (concrete ramp), and set back the road to provide more room for a natural streambed and banks. Defendants shall narrow the road and accompanying vehicle barrier to a reduced total width no greater than 20 feet at any point, measured from the toe of the inside slope to the top of the creek-side vehicle barrier. The vehicle barrier height shall not exceed two (2) feet, and the slope of the creek-side vehicle barrier shall be no steeper than 1.5h to 1v (67% slope). Runoff from the road shall be controlled pursuant to DFW and Regional Water Board requirements. Defendants shall establish an enlarged creek channel that contains the features set forth in the Restoration Plan Drawings, the horizontal dimensions of such channel shall be determined by the extent of excavation within the “grading envelope.” Defendants shall provide for enhanced ecological function and resident trout passage consistent with a geomorphically stable, self-sustaining channel. Defendants shall follow the hydraulic design criteria in the DFW Restoration Manual unless such criteria cannot be met due to the gradient of the reaches, or bedrock grade controls confirmed by the independent geologist as described below, in which case the stream simulation criteria in the DFW Restoration Manual, revised as necessary with off-site analogs, shall apply.</p>	<ul style="list-style-type: none"> - Design modified to reflect lack of anadromous fish species and address aquatic species that may be present in the Creek. - Restoration Plan Drawings available allowing for more specificity in the description on some items. - Field Engineering Guidance added to 2016 Amended Consent Decree to provide more clarity on engineering/project details, as well as a defined “grading envelope.” - Refined Reaches to which this paragraph applies (modified to Reaches 11 and 12 from 2013 Consent Decree, which applied these terms to Reaches 10, 11, and 12).
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	<p>-Defendants shall reconstruct the channel at a lowered profile and alignment within the “grading envelope” as depicted in the Restoration Plan Drawings and incorporated Field Engineering Description. Defendants shall remove all material to the lower limit of the potential design channel invert shown in the Restoration Plan Drawings, subject to the criteria in the Field Engineering Description. If Defendants assert they have excavated to bedrock prior to reaching the lowest elevation at any location within the “grading envelope,” an independent professional geologist will assess Defendants’ assertion and make the final determination of the existence and extent of any such bedrock consistent with Paragraph 35 above. The course of the Creek shall follow exposed bedrock, and/or large boulders, cobbles, sands and gravels not sourced from limestone-containing mine wastes or overburden.</p>	
<p>Paragraph 38. Reaches 8 and 9 - Defendants shall provide for sustainable fish passage throughout reaches 8 and 9 by sufficiently setting back the road and associated slopes to provide more room for a natural streambed and banks. Defendants shall narrow the road and accompanying vehicle barrier to a reduced total width no greater than 28.5 feet at any point, measured from the toe of the inside slope to the top of the creek-side vehicle barrier. The vehicle barrier height shall not exceed 5 feet, and the slopes of the vehicle barrier shall be no less than 1.5 to 1 (67% slope). Defendants shall establish an enlarged creek channel that contains the features set forth in the conceptual modified trapezoidal cross-section as shown in Exhibit B except the south side slope shall meet existing slope conditions</p>	<p>Paragraph 39. Reaches 8, 9, and 10 - Defendants shall improve channel stability and enhance ecological function throughout reaches 8, 9 and 10 by sufficiently setting back the road and associated slopes to provide more room for a natural streambed and banks as depicted in the Restoration Plan Drawings. Defendants shall narrow the road and accompanying vehicle barrier to a reduced total width no greater than 20 feet at any point, measured from the toe of the inside slope to the top of the creek-side vehicle barrier. The vehicle barrier height shall not exceed two (2) feet, and the slope of the creek-side vehicle barrier shall be no steeper than 1.5h to 1v (67% slope). Runoff from the road shall be controlled by DFW and Regional Water Board requirements. Defendants shall establish an enlarged creek channel that contains the features set forth in the Restoration Plan</p>	<p>- Design modified to reflect lack of anadromous fish species and address aquatic species that may be present in the Creek. - Restoration Plan Drawings available allowing for more specificity in the description on some items. - Field Engineering Guidance added to 2016 Amended Consent Decree to provide more clarity on engineering/project details, as well as a</p>

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<p>and the north side slope shall be modified up to a 1.5 to 1 (67% slope). Fish passage design approaches for all reconstructed creek portions shall follow the DFW Restoration Manual, and shall incorporate channel lengthening meanders and stepped pool and grade control complexes.</p> <p>- Defendants shall remove the culvert in the vicinity of Station 59 and, if replaced, replace it with a concrete box culvert with a sustainable, natural gravel bottom. Fish passage design approaches for all rehabilitated or replaced culverts shall follow the DFW Restoration Manual. Lehigh shall remove, and not replace, any culvert in the vicinity of Station 48. Defendants may leave the culvert in the vicinity of Station 42 as is, unless such culvert has greater than a 2% grade and/or does not have a gravel bottom in which case it shall be removed, and if replaced, it shall be replaced with a concrete box culvert with a sustainable, natural gravel bottom designed in accordance with the DFW Restoration Manual.</p> <p>- Defendants shall remove the alluvial fan of gravel deposited on the floodplain located upstream of the culvert crossing in the vicinity of Stations 61-62. Defendants shall remove the gravel from the channel and banks located in the ephemeral drainage from a storage area in the vicinity of Stations 61-62 and take all other necessary measures to prevent further mining-related sediment and material from reaching Permanente Creek in the future from this drainage. Defendants shall revegetate the floodplain and ephemeral channel with native vegetation.</p>	<p>Drawings. Defendants shall provide for enhanced ecological function and resident trout passage through these reaches consistent with a geomorphically stable, self-sustaining channel. Defendants shall follow the hydraulic design criteria in the DFW Restoration Manual unless such criteria cannot be met due to the gradient of the reaches, or bedrock grade controls confirmed by the independent geologist as described herein, in which case the stream simulation criteria in the DFW Restoration Manual, revised as necessary with off-site analogs, shall apply.</p> <p>- Defendants shall remove the culverts identified as Culverts 7 and 9 in the Restoration Plan Drawings and restore the area with a naturalized channel as depicted in the Restoration Plan Drawings. With respect to fish passage, Defendants shall follow the hydraulic design criteria in the DFW Restoration Manual unless such criteria cannot be met due to the gradient of the reaches, or bedrock grade controls confirmed by the independent geologist as described herein, in which case the stream simulation criteria in the DFW Restoration Manual, revised as necessary with off-site analogs, shall apply.</p> <p>- Defendants shall remove the alluvial fan of gravel deposited on the floodplain located upstream of the culvert crossing as depicted in the Restoration Plan Drawings. Defendants shall remove the gravel from the channel and banks located in the ephemeral drainage from a storage area as depicted in the Restoration Plan Drawings and take all other necessary measures to prevent further mining-related sediment and material from reaching Permanente Creek in the future from this drainage.</p>	<p>defined “grading envelope.”</p> <p>- Refined Reaches to which this paragraph applies (modified to Reaches 8, 9 and 10 in 2016 Amended Consent Decree).</p> <p>- The 2016 Amended Consent Decree modified the number of culverts being removed and/or replaced.</p>
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	<p>Defendants shall revegetate the floodplain and ephemeral channel with native vegetation.</p>	
<p>Paragraph 40. Reaches 6 and 7</p> <ul style="list-style-type: none"> - Defendants shall provide for sustainable fish passage throughout reaches 6 and 7 by making sufficient modifications to the existing concrete-lined channel to be consistent with the fish passage design approaches set forth in “Fish Passage Design for Road Crossings: an Engineering Document Providing Fish Passage Design Guidance for Caltrans Projects,” Caltrans 2007, attached as Exhibit D, or its revision if approved by Plaintiff. The design shall ensure the passage of adult and juvenile fish during high and low flows, and provide for resting areas. - Defendants shall also create at least two (2) sustainable, shaded pools for migrating fish, located at approximately Stations 25-27 and 17. Each pool shall be at least fifteen (15) feet long, at least seven (7) feet wide, and have a depth of at least three (3) feet. The bottom of each pool shall be at, or lower than, the bottom elevation of the existing concrete channel. Defendants shall partially backfill the pools with a gradation of rock to simulate a natural pool. Larger rocks shall be used at the upstream end of the pool to provide resting places for fish within the scour pool. A gradation of larger to smaller rocks shall be used downstream (beginning no closer than five (5) feet to the upstream end) towards the weir and the next drop to transition from the three (3) feet deep area to a shallower depth at the downstream weir. - Defendants shall also remove the culverts in the vicinity of Stations 28- 	<p>Paragraph 40. Reaches 6 and 7.</p> <ul style="list-style-type: none"> - Defendants shall plant native riparian vegetation and trees on the southern bank along the concrete channelized portion of Permanente Creek to provide improved shading and reduce vegetation growth within the concrete channel, thereby improving sediment transport and enhancing fish passage. 	<ul style="list-style-type: none"> - Project modified based on land ownership and control issues (Union Pacific owns the land) - Project also modified after regulatory agencies opined this work would be better implemented after facility closure, due to the constraints of ongoing operations at/near the Cement Plant.

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<p>29 and Stations 34-37 and, if replaced, replace them with concrete box culverts with sustainable, natural gravel bottoms. Any box culvert installed at Stations 34-37 shall provide for permanent passive lighting at approximately every fifty (50) feet sufficient to illuminate the floor of the culvert during the day to the same level of illumination that exists twenty (20) feet from either end of the culvert. Defendants may leave the culverts in the vicinity of Stations 38-39 and 31-32 as they are, unless any culvert has greater than a 2% grade and/or does not have a gravel bottom in which case it shall be removed, and if replaced, it shall be replaced with a concrete box culvert with a sustainable, natural gravel bottom designed in accordance with the DFW Restoration Manual. Fish passage design approaches for all rehabilitated or replaced culverts shall follow the DFW Restoration Manual.</p>		
<p>Paragraph 41. Reaches 2 through 5.</p> <p>- Defendants shall provide for sustainable fish passage throughout reaches 2, 3, 4 and 5 as follows. Defendants shall remove the Pond 22 steel diversion structure, culverts, and ancillary concrete structure at the pond outlet, leaving the concrete dam structure in place. Immediately downgradient of the concrete dam structure, Defendants shall create an appropriate step pool transition channel profile to ensure sustainable fish passage up and over the concrete dam structure. Defendants shall leave Pond 14 in place for California red-legged frog use. Defendants shall make modifications to the Pond 14 bypass channel, if any, to ensure it is the main creek channel suitable for</p>	<p>Paragraph 41. Reaches 2 through 5.</p> <p>- Nothing in this Amended Consent Decree is intended to preclude measures that Defendants may take in Reaches 2 - 5 to improve fish passage or make other Permanente Creek habitat improvements, or that other parties may take downstream therefrom.</p>	<p>- 2016 Amended Consent Decree removed previous project elements for these reaches, because the original elements were designed to address anadromous fish species not present in Permanente Creek. Further, there were concerns about unnecessary impacts to California red-legged frog at Pond 14.</p>

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<p>fish passage in accordance with the DFW Restoration Manual. Where the Pond 14 outfall channel meets the bypass channel, Defendants shall install a permanent drop structure barrier to discourage the passage of fish up to Pond 14. Defendants shall place rock to armor the channel, stabilizing it under clear-water discharge conditions.</p>		
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