



SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY
SFCJPA.ORG

June 9, 2015

Dr. Terry Young, Chair
Members of the Board, and
Mr. Bruce Wolfe, Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Ongoing Request for Reconsideration and Revision of the Certification for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project (Project)

Dear Chair Young, Members of the Board, and Mr. Wolfe:

We are writing regarding the Request for Reconsideration and Revision (Request) submitted on May 7 by the San Francisquito Creek Joint Powers Authority (JPA); my comments at the Regional Water Board's May 13 Board meeting; our June 1 follow-up email seeking the promised collaboration regarding the issues raised by the two items above; the June 3 written reply to the JPA from Executive Officer Bruce Wolfe; and Mr. Wolfe's June 3 Report to the Regional Water Board.

We begin by noting that the parties continue to take small steps of progress toward an amended Certification, for which the JPA again expresses its appreciation. This is good news. That said, our ongoing communications still lack the kind of precision and accuracy necessary to prevent misunderstandings or confusion as we work together to complete the Certification process.

This letter, therefore, serves two purposes. One, we recap our understanding of the revisions to the Certification that are proposed in Mr. Wolfe's June 3 letter. Secondly, we ask for additional clarification, revision, and confirmation so that this matter can find the appropriate conclusion.

1. Gas Pipeline. Thank you for confirming that it is the shallow depth of the PG&E gas pipeline installed in 1959 that has caused the Regional Water Board staff to require removal of this pipeline in Condition 19, and that this is the scope of work referenced on page 5 of the Certification. Board staff did advise us, but not until February 2015, that they had erroneously assumed this pipeline was buried at the same depth as the 1931 predecessor line, which has been safely abandoned in place for 56 years. It is now clear that removal of the shallow 1959 pipeline, once it is abandoned during Project construction, is the work required by the Certification.

The JPA believes that the conditions of certification should be based on impacts to water quality that are scientifically measurable and based on reasonably foreseeable impacts, rather than possible impacts that are remote, speculative, or have no precedent at a similar location. Furthermore, the JPA cannot support your proposal that the Certification be amended to add factual demonstrations by the JPA that are impractical because they rely on the JPA to prove the impossible (that conditions will never change) or because they ask the JPA to mitigate for a future potential action by others. For these reasons, we ask that the demonstrations required for the elimination of Condition 19 be rewritten. The demonstrations should be designed to allow the Regional Water Board to conclude that abandonment in place of the 1959 PG&E pipeline, in whole or in part, will not create "a reasonably foreseeable chance that the line could constrain the creek channel in the future."

2. Executive Officer Review and Approval of JPA Submittals. The JPA would like to reiterate what was stated in our May 7 letter and verbally on May 13 that its concerns do not pertain to the Certification's requirement for subsequent approvals. Our concerns arise out of an unconstrained potential for delay, most especially as to items that will affect the critical path of Project construction. Your June 3 letter states that a 60-day lead time will be appropriate for our submittals, and that the Administrative Procedures Act requires you to respond in writing within 30 days of submission. If these two principles will universally apply to all future approvals, we accept them as our solution. Where possible, we will also honor your recommendation that the parties begin discussion and review of critical path documents "well in advance of 60 days."

3. Impact and Mitigation Values. Thank you for agreeing to revise the impact and mitigation requirements of the Certification. We will submit revised values for your incorporation at the earliest possible time – these will correct both clerical errors and Project revisions.

4. Five-Year Reports. We similarly thank you for agreeing to amend Certification Conditions 31 and 32 to eliminate our reporting into perpetuity. You have suggested that reports may be required for the operational life of the Project; we would propose that reports be required for the operational life of the Project or until a new Certification governing Project operations and maintenance is issued, whichever is earlier.

Finally, we wish to correct the false impression that other agencies are waiting for the Regional Water Board to amend the Certification before working on their permits. This is not what we have been told and not what we stated on May 13. Instead, the other agencies have said that they require a finalized Certification in order to complete their work.

To that end, any report that we have not been responsive to the federal agencies is inconsistent with the record. To be sure, we waited over 24 long months for Regional Water Board staff to issue the Certification, and within weeks of receiving that document, the JPA was able to respond to requests made by the U.S. Fish & Wildlife Service and National Marine Fisheries Service.

Please add this letter to the ongoing administrative record for this Project. We look forward to quickly resolving the remaining issues before us.

Sincerely,



Len Materman
Executive Director

cc: SFCJPA Board of Directors