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**San Francisco Bay Regional Water Quality Control Board**

*Sent via electronic mail to [len@sfcjpa.org](mailto:len@sfcjpa.org): no hard copy to follow*

June 3, 2015  
CIWQS Place ID: 757384

Len Materman, Executive Director  
San Francisquito Creek Joint Powers Authority  
615 B Menlo Avenue  
Menlo Park, CA 94025

**Subject: May 7 Request for Reconsideration and Revision of the Certification for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project**

Dear Mr. Materman:

I have reviewed the Request for Reconsideration and Revision submitted to me on May 7, 2015 (Request) by the legal representatives of the San Francisquito Creek Joint Powers Authority (JPA). The Request, as supported by your comments at the Water Board's May 13 Board meeting, asks that the Water Board reconsider and revise the Clean Water Act section 401 water quality certification (Certification) I issued on April 7, 2015, for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project (Project). Based on the Request, I will amend portions of the Certification as expeditiously as possible to address the concerns raised in the Request while at the same time ensuring the Project will comply with applicable State water quality standards.

The following is intended to further our discussions on resolving the JPA's concerns:

1. **Gas Pipeline:** The JPA requests that the Water Board reconsider the requirement to remove the PG&E gas pipeline once abandoned. The Request notes that the JPA was unaware of the gas pipeline removal issue until February 2015 and requests that Certification Condition 19 be removed or revised in order to eliminate the ambiguity and uncertainty as to the obligations of the JPA with respect to the pipeline's removal.

It is the Water Board's standard approach to condition certifications to require removal of abandoned infrastructure that may constrain the permitted project and/or impact water quality (as explained in detail below) and to require location (or relocation) of live utility lines and other infrastructure to minimize the potential for impacts. Typically, this is accomplished through the applicant's submittal of a complete project design, so that the condition of certification simply requires

construction of the accepted design. In this case, JPA representatives did not inform Board staff of the shallow depth of the gas pipeline until January 28. Accordingly, because the JPA's Certification application did not address the pipeline's potential impacts (i.e., provide evidence that leaving the gas pipeline in place would not constrain the creek channel or otherwise impact water quality in the future), I accepted staff's recommendation that the certification include a condition requiring removal of the pipeline.

Condition 19 is necessary to avoid or minimize the water quality impacts associated with abandoning the pipeline in place. These water quality impacts include the potential to constrain the creek channel's movement post-construction, to increase channel sedimentation and/or channel erosion post-construction, to disturb or delay regrowth of endangered species' habitat post-construction, and to directly impact the creek channel and the habitat it provides during the activities to abandon the line in place. Since the abandoned gas line would no longer serve any purpose, these impacts can be avoided by its removal during project construction.

Additionally, based on our experience with similar attempts to abandon utility lines in place, leaving such hard infrastructure in place typically reduces a project's ability to function as designed and ultimately results in a decision to remove the abandoned infrastructure post-construction. For flood control projects like this one, that means that abandoned infrastructure commonly has been found to limit flood flow capacity and increase maintenance expenses leading to a decision to remove it. Post-construction removal results in increased water quality impacts and increased habitat disturbance, both of which increase project mitigation requirements and project costs. These can all be avoided by removing the unnecessary line during project construction.

Nonetheless, I am prepared to amend Condition 19 to read similar to Condition 18, wherein the JPA is required to submit a demonstration that there is not a foreseeable chance that the relocated sanitary sewer line will constrain the creek channel in the future. Such a demonstration specific to the gas pipeline would need to address the following:

- a. The JPA shall confirm the depth of the gas pipeline proposed for abandonment and shall demonstrate that its alignment will not impact construction of the Project and the success of Project mitigation.
- b. The JPA has indicated that removal of the gas pipeline may result in a significant expense, due largely to management of large groundwater flows the JPA anticipates may be present. The JPA shall provide technical information that supports the assertion that 350,000 gallons per day of groundwater would be generated during removal of the abandoned pipeline. This should include data supporting an estimate of the depth from the creek bed to groundwater, a description of the activities and costs corresponding to specific pipeline removal activities, such as the methods for groundwater extraction, containment, and treatment, and a description of measures to be used to protect water quality

- during the dewatering activities, including a dewatering monitoring plan and discharge strategies.
- c. The JPA shall demonstrate that the pipeline to be abandoned has little chance to act as a future constraint to the creek. To address this question, the JPA shall perform and submit a sediment transport analysis to determine the degree to which leaving the pipeline buried within the creek bed might threaten the future stability of the creek channel and its banks/levees. The sediment transport analysis must account for predicted climate change impacts, such as an upstream shift in the tidal prism and how such a shift would impact the channel in the area of the pipeline proposed for abandonment. We also understand that Stanford plans to move forward with a project on the Searsville Dam at the top of the San Francisquito Creek watershed. The JPA should consider including this project's future sediment loads in its analysis.
  - d. We note that the Project, as proposed in the JPA's application materials and as approved in the Certification, already has a significant amount of utility lines targeted for removal. We anticipate that the methods that will be used for managing groundwater and protecting water quality during removal of these utility lines would be similar to what would be used to remove the gas pipeline. The JPA needs to demonstrate that these planned removal activities will need to be implemented in a manner that makes them feasible to undertake when removal of the gas pipeline is not.

The requirements of the demonstration listed in items a. through d. above are fairly standard for a project of this size and scope. My staff is prepared to work with JPA staff on amending Condition 19 language to accomplish the above.

2. **Executive Officer's Review and Approval of JPA Submittals:** Based on our October 31, 2014, meeting, we were surprised by this concern. At that meeting, representatives of the JPA made it quite clear that the JPA wanted me to issue the Certification before all of the Project's plans were complete and other agencies had completed their review of the Project's design. We committed to doing that but noted that subsequent submittals would be subject to Executive Officer approval, consistent with all other submittals to the Water Board that do not require specific approval at the Water Board level.

In cases where we have certified a project prior to submittal of final documents, we have found 60 days to be the appropriate lead time needed for Board staff to review the submittal, for the applicant to respond to written comments based on that review, and for the Executive Officer to approve a revised submittal, provided that the revised submittal is complete, before construction activities are scheduled to begin. As indicated at the October 31 meeting, we intend to provide written responses and approvals to the required submittals in a timely manner.

It is worth noting that all future Project submittals will be governed by the State Administrative Procedures Act and other related requirements, including the requirement for a response within 30 days. That is consistent with all certifications

we have issued requiring submittals acceptable to the Executive Officer. As such, we see no need to amend the conditions that require Executive Officer approval of future submittals.

I encourage the JPA to keep my staff informed of any changes to the Project based on other agency requirements, updated on the timing of other agency approvals, and informed of which components of the Project are on its critical path so we can be prepared to review future submittals. Further, if at all possible, I encourage the JPA to submit documents requiring review and approval well in advance of 60 days prior to scheduled construction commencement to avoid any delays.

- 3. Impact and Mitigation Values:** The JPA requested that the Water Board amend the Certification to revise the habitat impact values and associated mitigation requirements based on correcting a clerical error and new information that has emerged since the Water Board adopted the Certification.

I am prepared to revise the impact and mitigation information in a Certification amendment once the JPA submits finalized revised information to the Water Board. We understand that JPA staff is continuing to develop revised impact and mitigation information. I encourage the JPA to incorporate new information that continues to emerge as the JPA revises the Project design in response to comments from the other regulatory and resource agencies reviewing it, including the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Department of Fish and Wildlife. We understand that such new information currently includes a revised Project boundary (which may exclude a freshwater pond previously counted as impacted waters) and a newly-stated National Marine Fisheries Service request for construction of fish refugia habitat in the creek channel to provide shelter during high flow events and to increase habitat diversity.

- 4. Five-Year Reports:** The JPA expressed concern that the Certification required it to indefinitely provide reports every five years on how it is addressing future climate change and other maintenance impacts to the Project. We started including such a requirement in permits for all infrastructure projects in or adjacent to the Baylands in 2009. Some of these requirements have more clearly tied reporting to the operational life of a project. We will work with the JPA to identify the appropriate end dates for the requirements in conditions 31 e) and 32 and amend the Certification accordingly.

As indicated at the May Board meeting and in your meetings with staff after that meeting, we intend to work with your staff to resolve the JPA's concerns within the constraints of State and Regional Water Board policies and standards. We plan to amend the Certification as discussed above; however, I encourage the JPA to work with us to resolve all of its issues so we can both minimize the time involved in amending the Certification. Please feel free to contact me at (510) 622-2314 or via email to [BWolfe@waterboards.ca.gov](mailto:BWolfe@waterboards.ca.gov), or Susan Glendening at (510) 622-2462 or via email to [Sglendening@waterboards.ca.gov](mailto:Sglendening@waterboards.ca.gov) to discuss the matter further.

Sincerely,

Bruce H. Wolfe  
Executive Officer

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