
San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail to len@sfcjpa.org: no hard copy to follow

June 24, 2015
CIWQS Place ID: 757384

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

Subject: San Francisquito Creek Joint Powers Authority Request for Clarification, Revision, and Confirmation Regarding Planned Amendment to the 401 Certification for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project

Dear Mr. Materman:

On behalf of the San Francisco Bay Regional Water Quality Control Board (Water Board), I am reaffirming our intent to amend the Clean Water Act Section 401 water quality certification (Certification) for the San Francisquito Creek Flood Reduction, Ecosystem Restoration and Recreation Project (Project). Herein we respond to the four items raised in the San Francisquito Creek Joint Powers Authority's (JPA's) recent letter dated June 9, 2015.

Item 1

In regard to the existing gas pipeline, we proposed a revision to Condition 19 in our June 3, 2015, letter to the JPA. This proposed revision describes the information and analyses we assert are necessary to demonstrate that leaving any of the gas pipeline in place will not adversely impact the functioning of the creek and its ability to convey flood waters as designed (the specific scope of this effort is described under item 1, a. – d.). Your June 9 letter is unclear as to what aspects of item 1, a. – d. you specifically object to. Nonetheless, the JPA is welcome to submit an alternative proposal for how it plans to demonstrate that any pipelines abandoned in the project location will not create a reasonably foreseeable chance that these lines will constrain or alter the functioning of the creek channel.

Item 2

We concur with your statement pertaining to review times for future approvals. We appreciate the JPA's commitment to discuss project details well in advance of submitting documents that require Executive Officer approval. We also would appreciate receiving a timeline showing your anticipated dates for submitting the "items that will affect the critical path of Project

construction” to which you referred in your June 9 letter. Such collaboration will expedite our review of the JPA’s submittals and facilitate Project construction.

Item 3

I understand that the JPA is working to finalize Project details, which will result in new impact and mitigation numbers. These include the Project boundary with the Palo Alto Municipal Golf Course, hauling routes, a fish refuge near the Palo Alto pump station, habitat diversity features within the creek channel, and Faber Tract Marsh upland refugia. We have been working closely with JPA staff since April 15, 2015, to assist in the process to re-define the impact and mitigation numbers, and will continue to do so as the JPA works out the final Project details. We reiterate our willingness to revise the impact and mitigation numbers accordingly.

Item 4

In principle we are agreeable to the JPA’s proposal that the 5-year reports be required for the operational life of the Project, or until a new certification governing Project operations and maintenance (O&M) is issued, whichever is earlier. Our consideration of the proposal is dependent upon the review of the information requested in regard to the PG&E pipeline, which will define some of the O&M activities for the life of the Project.

Finally, the issue keeps surfacing as to whether the Water Board is delaying other agencies from issuing permits. The transcript from our May 13, 2015, Water Board meeting indicates that you stated “it’s holding up other agencies’ interests to wonder whether the Regional Water Board has other things up its sleeves that it’s going to add later. I’d like to put this thing to bed so that we can go on and work with these other agencies.” In your June 9 letter you state that “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.” In response we’d like to clarify that the U.S. Army Corps of Engineers (Corps) is the only agency that requires Water Board certification prior to moving forward. On April 7, 2015, we certified the project. Therefore, the Corps may acting on its permit as soon as it receives the information it needs form the federal resource agencies. I understand the Corps has not yet initiated the required Endangered Species Act consultations with National Marine Fisheries Service or the U.S. Fish and Wildlife Service because both agencies are reviewing responses received in early June, 2015, or awaiting written responses to inquiries the agencies sent to the JPA in November-December 2014. The Corps will not be able to issue a 404 permit for the Project until the consultations have been completed. By law, the federal resource agencies have up to 90 days to complete a consultation, once formally initiated, and another 45 days to prepare the corresponding biological opinion, or 135 days in total. Similarly, the California Department of Fish and Wildlife is currently reviewing responses it just received during the week of June 8, 2015, from the JPA responding to inquiries CDFW issued in December 2014 about the JPA’s Streambed Alteration Permit application. Based on our experience working on these types of projects, we recommend that the JPA convene multiagency meetings if it wishes to expedite the project review and permitting processes among the agencies involved.

In summary, we are in conceptual agreement with the San Francisquito Creek Joint Powers Authority (JPA) as to the approach moving forward and will revise the certification when you have provided the information needed to address Items 1 and 3 in your letter of June 9, 2015.

Please feel free to contact me at (510) 622-2314 or via email to bwolfe@waterboards.ca.gov, or Susan Glendening of my staff at (510) 622-2462 or Sglendening@waterboards.ca.gov to discuss the matter further.

Sincerely,

Bruce Wolfe
Executive Officer

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