

December 16, 2011

San Francisco Bay Regional Water Quality Control Board  
Attn: Mrs. Laurie Taul  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**Objection to Proposed Settlement Agreement and Stipulated Administrative Civil Liability -- City of Napa, Trancas Crossing Park Project**

To whom it may concern,

I am writing this letter to express my disapproval with the San Francisco Bay Regional Water Quality Control Board's proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order with the City of Napa. The current language and penalty fails to send a strong enough message to a municipality that has clearly violated Local, State, and Federal laws. In violating these laws, the City of Napa has adversely impacted wetlands, polluted an already impaired waterway (Napa River), and gained a significant economic benefit. The City has effectively dismissed the importance of the environment and has demonstrated its lack of respect for regulatory agencies.

Before I proceed with my objections, I would like to provide you with my background. I have degrees in both environmental science and economics. I have worked in environmental consulting for the past 3 years. During these years I have focused my efforts on wetlands management and habit restoration. I have also been involved in environmental oversight. One of my main projects was a 2,500 acre mitigation site that contains both healthy and degraded wetlands. A power corridor runs through the site and required heavy construction to upgrade the existing transmission line. As you can probably imagine, I am aware of the difficulties of minimizing environmental damage during construction. Unlike the City of Napa, the power company that I worked with was prudent in their planning and respected the laws that governed their actions. Despite major economic loss, the power company followed all conditions of the permit. Construction only took place during the dry season, all BMPs were adhered to, and there was constant dialogue with the relevant agencies.

**Objections:**

***Mitigation Measure BIO-6, MMP, and Condition 8 of 401 Water Quality Certification***

Based on indisputable evidence from public record, photographic documentation, and eyewitness accounts, the City of Napa failed to implement mitigation measures that were adopted pursuant to CEQA. In particular, Mitigation Measure BIO-6 states that construction shall take place during the dry season. In the process of obtaining its 401 water quality certification, the City included a Mitigation and Monitoring Plan (MMP).

The MMP required that the City follow Mitigation Measure BIO-6. The Board issued the 401 water quality certification with a number of conditions attached to it. Condition 8 required that the permittee successfully complete the MMP. Any changes in the MMP were to be approved in writing by the Board. There is no question that the City worked throughout the wet season. In doing so, the City violated condition 8 of its 401 water quality certification. I am requesting that the Board hold the City liable for violating its 401 water quality certification. This is not a mild infraction and this matter should not be taken lightly.

### ***Days of Violation***

Each day that construction took place without coverage under the Construction Storm Water Permit (43 days) should be counted in the days of violation. The Board determined that there were six days of violation. From the Board's view, discharge of storm water from the Trancas Park Project to waters of the United States (while not covered under the Construction Storm Water Permit) was likely to have occurred during the six days that it rained. It can be inferred that the Board is only looking at surface discharge.

Storm water can be transported into waters of the United States by means of both surface flow and subsurface flow. Groundwater flow of storm water is much slower than surface flow and can occur for weeks or even months following a precipitation event. Given the proximity of Salvador Creek and the Napa River to the construction site, along with the clay substrate (necessary for the wetlands that are present), it is very likely that the storm water moved laterally and this seepage entered waters of the United States.

It would be impossible to accurately determine subsurface flow since the City altered (to an unknown extent) the porosity of the porous mediums below while working with soil compactors and heavy equipment. Furthermore, heavy equipment leaks (there were no spill kits on site) and this point source pollution would have been washed away into the waterways during storm events. Therefore, each day that the City operated without coverage should be counted as a day of violation. Days of violation should also include every day during the wet season that the City worked, since it clearly violated condition 8 of the 401 water quality certification.

### ***Destruction of Wetlands, Riparian Habitat, and Associated Effects***

The City spread 980 tons of non-porous asphalt throughout wetlands and in the floodway. In order to lay out approximately 4,300 feet of road, the City added a sub grade that was one foot deep, mixing 6% cement. The road will adversely affect the hydrology of the wetlands. To make matters worse, the City installed the road during the wet season, tore out a section of the road during a rain event, and stored the equipment and asphalt on site. Actions like this demonstrate the City's lack of concern for the environment. Was the City permitted to remove sections of road?

The City Manager has admitted to removing vegetation outside the permitted area (in a riparian habitat area). This admission of guilt is on record. Removing vegetation in riparian habitats can lead to erosion. Increased erosion leads to increased total suspended solids (TSS) which has negative affects on aquatic life. The Napa River and its tributaries are spawning grounds for Chinook salmon. It is known that high TSS levels can delay salmon migration.

Because the City of Napa cares so much about the environment, they decided that this "nature park" would be a great place for dogs. Dogs are constantly off leash, swimming in the shallow silty bottom of the upper Napa River and in Salvador Creek. The City has received numerous complaints in regard to dogs being off leash. This is a water quality issue. Dogs increase total suspended solids and pollute the waterways with fecal coliform. The Board should force the City to stop allowing dogs in Trancas Crossing Park. Below is a picture from the Napa Register, showing a park visitor and her three dogs in the Napa River.



Imaged acquired from online publication on December 16, 2011, [Water agency requests park construction documents](http://napavalleyregister.com/news/local/water-agency-requests-park-construction-documents). Napa Valley Register: [http://napavalleyregister.com/news/local/water-agency-requests-park-construction-documents/article\\_e2e45d92-a84a-11e0-9ab3-001cc4c03286.html?mode=image](http://napavalleyregister.com/news/local/water-agency-requests-park-construction-documents/article_e2e45d92-a84a-11e0-9ab3-001cc4c03286.html?mode=image)

### ***Economic Benefit***

The City of Napa received an enormous economic benefit by commencing construction prior to coverage under the Construction Storm Water Permit. If the City of Napa had waited until it received coverage, it would have lost its grant funds and incurred substantial costs with its contractors. During public meetings, the City discussed how critical the timeline for completion would be if they wanted to keep the grant funds. The Board should investigate this matter and recover any economic benefits that resulted from violating the law. If the City claimed that its only benefit was a delayed cost of compliance, then the City has clearly provided false information to the Board. Those responsible for providing false information should face criminal charges.

### ***Alleged vs Proven Guilty***

The City of Napa must be pleased with the Board's decision in not holding it legally liable for multiple violations. From a citizen's perspective, this is just another example of our broken system. Take a glance at public documents (receipts, contracts, etc.) showing when the City commenced construction and compare that to when the City was actually issued permit coverage. This violation is as black and white as it can possibly be. Please do what is right and hold the City legally liable for its actions. Certainly, violators that have been held legally liable by the Board would see this as a case of favoritism/discrimination.

### ***Conclusion***

The current punishment that will be imposed on the City of Napa does not fit the crime. The City has broken many laws and is only being "alleged" of breaking one. A penalty of \$20,000 for a City with an operating revenue of \$58,000,000 is a joke. That's equivalent to fining me \$15 (based on my revenue) for the same violations. Please reevaluate this case against the City of Napa. The City must be held legally liable, all economic benefits must be collected, all violations must be addressed, and a hearing must take place to ensure that justice prevails.

Sincerely,

A handwritten signature in cursive script that reads "Justin Anthony".

Justin Anthony