

April 27, 2017

VIA E-MAIL

Reclamation District No. 1614 Board of Directors
c/o Dan Schroeder
Newmiller and Beardslee
509 W. Weber Avenue, 5th Floor
Stockton, California 95203

Re: Further communication about February 6, 2017 Letter from Dominick Gulli
Our client: San Joaquin Area Flood Control Agency (SJAFCFA)

Dear Board Members:

As you know, SJAFCFA, the City of Stockton, San Joaquin County, RD 1614, RD 828, the U.S. Army Corps of Engineers, and California Department of Water Resources have been pursuing the Smith Canal Gate project for several years, following FEMA's disclosure that it did not have information sufficient to accredit the Smith Canal levees and its presentation of a Preliminary Accredited Levee (PAL) agreement to Reclamation Districts 1614 and 828. The PAL was the administrative process whereby the two RDs would state their belief that the levees could be accredited and then would work in good faith to present supporting information to FEMA. At the time of the presentation of the PAL agreement both RDs elected to not seek the PAL because both districts concluded that significant encroachments, erosion, and other issues made the Smith Canal levees unaccreditable. Because neither RD had jurisdiction to develop a complete solution for the problem, SJAFCFA reluctantly agreed to step in and help. Since that time, SJAFCFA worked with the other parties to develop the proposed project, obtain a conditional letter of map revision from FEMA for the project, initiate design, propose an assessment that was ultimately passed by more than a majority of property owners voting, apply for and receive a cost share from the State for more than 50% of the costs, and complete an environmental impact report.

Challenges to the Project

Unfortunately, SJAFCFA has been dealing with a lawsuit by the Atherton Cove Property Owners Association that has expressed concerns primarily about water quality in the cove, and by constant and concerted efforts by Dominick Gulli to stop the project. Mr. Gulli has advocated that SJAFCFA instead pursue other options, including working with Mr. Gulli who has proposed various projects he claims will be lower cost.

Mr. Gulli has elected to put significant effort into challenging SJAFCA including, the filing of a lawsuit under CEQA; three attempts to amend his lawsuit to add claims (under the State contracting code, conflict of interest code, and assessment law); filing numerous and expensive Public Records Act requests (including four during a five day period in the last month); submitting a response to a Request for Qualifications for construction management services which was primarily focused instead on seeking to change the project; the drafting of newsletters and petitions; the submittal of voluminous packages of information and questions/claims at nearly every Board meeting in the past year; and an ongoing campaign to discredit the project at other public meetings and forums.

These efforts have sapped SJAFCA's limited staff resources and resulted in expenditures of hundreds of thousands of dollars of consultant and attorney time to respond to his communications. The sheer magnitude of these efforts has led staff to seek to limit its interaction with Mr. Gulli to try to conserve limited resources. It is for these reasons that SJAFCA initially declined to provide a substantive response to the letter you received from Mr. Gulli, and requested that you instead allow the SJAFCA staff and Board to address these issues at SJAFCA's Board meetings.

However, as a courtesy to Reclamation District 1614 as one of our key partners, we have elected to provide this substantive response to Mr. Gulli's letter. But in order to conserve our limited resources we do not intend to further address Mr. Gulli's communications outside of our normal SJAFCA channels. Doing otherwise would simply be unfair to the property owners along Smith Canal that are paying assessments for flood protection improvements, not to fund staff and consultants responding to the letters and claims submitted by Mr. Gulli in multiple forums.

Mr. Gulli's Letter

The following facts are relevant to the accusations in Mr. Gulli's letter:

1. Point #1 of Mr. Gulli's letter completely mischaracterizes the status of FEMA's approval of the gate project. When a local community intends to construct a project that will result in a positive change to the effective flood insurance rate map (or FIRM), it may apply for a conditional letter of map revision (a CLOMR). The point of the CLOMR is for FEMA to officially agree that a map prepared by the local community showing future conditions will be used by FEMA upon condition of the local community building the project. SJAFCA prepared such a CLOMR application, and it was approved by FEMA. Since that time, consistent with FEMA's procedures, FEMA has asked for certain additional data. It has never revoked the approved CLOMR, and during a conference call just two weeks ago FEMA confirmed the approved status of the CLOMR and SJAFCA agreed to two final information submittals. Indeed, one of the required submittals is a draft FIRM that shows the land behind the gate as in a Zone X, except for isolated areas affected by interior drainage. (Incidentally, the approved CLOMR also includes the positive effect on interior storm drainage as a result of your in-process

Wisconsin Pump Replacement Project.) Also contrary to Mr. Gulli's letter, FEMA is not seeking certification of the Smith Canal levees. Indeed, it was RD 1614 and RD 828's inability or unwillingness to certify those levees that led to the development of the Smith Canal Gate.

2. Mr. Gulli's letter again confuses the facts as to the relationship between the FEMA mapping, future FEMA mapping, and the Smith Canal assessment base. FEMA's current map for the area (which placed thousands of homes into the regulatory floodplain with required flood insurance and building restrictions) was based on FEMA's understanding of the topography at the time the FIRM was issued. FEMA later became aware that the topographic maps were wrong, and in fact significantly understated the number of homes that would be flooded as a result of a failure of the Smith Canal levees. I have attended meetings with FEMA in Washington D.C. in which FEMA officials have told us that once funding is available from the Federal budget, those maps would be changed and the floodplain would be enlarged. Those same officials have told us, however, that it would be a waste to spend money on that mapping if our project will be implemented, as the revised mapping would be irrelevant and would ultimately be superseded by the final maps showing the positive effects of the Gate. Separately, the assessment is applied to those properties that receive a lowered risk of flooding as a result of the construction of the Gate. These properties include the properties that have not been mapped into the floodplain yet by FEMA, but would be mapped if the project does not proceed.

3. Mr. Gulli's letter again confuses the facts as to the requirements of State funding. The Urban Flood Risk Reduction (UFRR) program under which the State will fund its share of the project is funded by Proposition 1E, a statewide bond. That bond requires that projects be part of the State Plan of Flood Control. These are levees or facilities for which the State has a level of responsibility, and facilities can become part of the State Plan of Flood Control as a result of Federal legislative action. The proposed Smith Canal Gate is part of the Lower San Joaquin River Feasibility Study, a U.S. Army Corps of Engineer's study to improve the entire region to higher levels of flood protection. Once this study is approved by Congress (expected as part of the Water Resources Control Act in 2018), the Gate will be part of the State Plan of Flood Control. This process will not add costs to the Gate. The Feasibility Study is nearly complete: 75% of the cost for the study has been paid for by the United States and California for the benefit of the entire region.

4. Mr. Gulli states that the Gate will require recertification every ten years at a cost of over a million dollars. But he ignores that recertification is a regular requirement for levees. All flood control structures require regular recertification. Indeed, the U.S. Army Corps of Engineers requires levees they certify to be recertified every ten years. And the State also requires regular recertification as provided for in the Urban Levee Design Criteria (ULDC) documents. And, if the Smith Canal Gate is not built, the Smith Canal levees themselves would require regular recertification. As to the cost, the Bear Creek recertification covered many miles of levees and was a significantly larger scope than that of Smith Canal; hence, the higher costs than what would be expected for the Smith Canal gate.

5. Mr. Gulli's facts regarding the right-of-way are also in error. Very little private property acquisition is needed to construct the gate. SJAFCA has been coordinating with the Stockton Golf and Country Club on the impacts, and a modest adjustment in the design was able to minimize impacts. Mr. Gulli also does not note in his letter that approximately 40% of the \$329,000 budget for real estate is a built-in contingency. At this point we are still working with our initial estimate of the costs of real estate acquisition and have no reason to believe that the budget is inadequate.

6. Mr. Gulli's statements in regard to Resolution 2011-05 are also in error. The statement in the resolution regarding the protection provided by the Smith Canal levees is correct, and is evidenced by fact that neither RD 1614 nor RD 828 elected to certify the Smith Canal levees, by the FEMA maps showing the levees as unaccredited, and by the presence of significant issues, such as encroachments, erosion, and other problems. The statement in the resolution regarding the 200-year protection to be provided by the gate is also correct, and is evidenced by the consideration of 200-year water surface elevations and the fact that DWR would not have funded the design grant if the gate was not designed to the 200-year level.

SJAFCA very much appreciates the partnership it has historically had with RD 1614 and RD 828 and the trust they showed in SJAFCA when SJAFCA agreed to step in and help with a solution for Smith Canal. We look forward to continuing that relationship. SJAFCA continues to pursue the project consistent with the desires of the majority of the voting landowners. SJAFCA trusts that this information is sufficient to set the story straight regarding these claims, and if further property owners make claims to your Board that you will refer those individuals to the SJAFCA Board meeting.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

DOWNEY BRAND LLP


Scott L. Shapiro

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cc: SJAFCA Staff and Board