



**Guadalupe-Coyote  
Resource Conservation District (GCRCD)**  
*An independent special district of the State of California*

888 N. 1st Street, Suite 204, San Jose, CA 95112  
Phone: 408-288-5888 Email: [gcrd@gcrd.org](mailto:gcrd@gcrd.org)

*Via e-mail*

September 19, 2016

Susan Glendening  
Environmental Specialist  
San Francisco Estuary Partnership/  
San Francisco Regional Water Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
[Susan.Glendening@waterboards.ca.gov](mailto:Susan.Glendening@waterboards.ca.gov)

Dear Ms. Glendening:

The Guadalupe-Coyote Resource Conservation District (GCRCD) appreciates this opportunity to provide comments regarding the Tentative Order for Waste Discharge Requirements for *Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project, Santa Clara County*. GCRCD is an independent special district of the State of California dedicated to the conservation of natural resources in Santa Clara County. We are concerned with the potentially significant impacts of the project, as proposed to be approved in the tentative order, on our watersheds, and request that the San Francisco Bay Region of the California Regional Water Quality Control Board (RWQCB) amend the proposed order to address those concerns.

1. The project does not meet its 2001 NOP objectives.

While acknowledging that the original NOP describes a larger project, the U.S. Army Corps' (Corps) decision to remove the higher-quality watershed area from the project should not reduce its obligation to meet the stated objectives, which include:

- improve flood protection in the cities of San Jose and Milpitas;
- reduce sedimentation and maintenance requirements in the creek;
- provide for recreational amenities; and
- integrate ecosystem restoration into the project.

It is alarming that the project appears to make no attempt to improve the ecological condition of the creek, and focuses on stability, rip rap, vegetation (roughness) maintenance, and sediment routing. It appears that the Mitigation Plan is the only opportunity for any ecological improvements, yet the plan does not specify where those improvements would occur, although it is presumed to be on a completely different creek. The one exception is the intent to replace non-native grasses with native.

2. The tentative order inaccurately states that the Project site does not presently support any rare or endangered species.

This statement does not appear to consider recent studies, and likely includes assumptions regarding temperature impacts that may not be based upon scientific evidence specific to the Coyote Creek watershed. The Santa Clara Valley Habitat Plan (HP), Appendix L, indicates that in other areas of the Coyote Creek watershed steelhead have been known to adapt to warmer temperatures, which should be examined. The HP also contains the following references to other potential species on Berryessa Creek in Volume 4 (pages 4-83,84):

*Impacts to California red-legged frog, California tiger salamander, and western pond turtle in the Diablo Range are limited to the Coyote Watershed, primarily within the San José planning limit of urban growth. For California red-legged frog, this includes impacts to primary and refugia habitat from dam seismic retrofits at Anderson Dam, implementation of flood protection projects on Coyote, Mid-Coyote, Upper Penitencia, Fisher, Lower Silver, Upper Silver, Berryessa, Quimby, Sierra, South Babb, and Thompson creeks; and levee reconstruction on Berryessa, Thompson, Coyote, and Upper Penitencia Creeks. Dam and reservoir maintenance is anticipated to impact potential breeding and upland habitat at the Coyote dam. Development within the planning limit of urban growth of San José, rural development, bridge construction/reconstruction, and construction of County Park facilities and infrastructure are expected to impact the lower stream reaches that serve as California red-legged frog primary habitat and adjacent secondary habitat. This is expected to include impacts to two California red-legged frog known occurrences on Metcalf Creek and Coyote Creek.*

*The impact locations for western pond turtle are similar to those from California red-legged frog. Impacts to western pond turtle primary and secondary habitat are expected to occur from dam seismic retrofits at Anderson Dam, implementation of flood protection projects in Coyote, Mid-Coyote, Upper Penitencia, Fisher, Lower Silver, Upper Silver, Berryessa, Fisher, Quimby, Sierra, South Babb, and Thompson creeks; and levee reconstruction and maintenance in Berryessa, Thompson, Coyote, and Upper Penitencia creeks. Dam and reservoir maintenance is anticipated to impact potential habitat on Coyote Creek below Coyote and Anderson dams. Development within the planning limit of urban growth of San José, rural development, bridge construction/reconstruction, and construction of County Park facilities and infrastructure are expected to impact the lower stream reaches that serve as primary habitat and adjacent secondary habitat.*

Whether or not the project identified suitable habitat because of limitations imposed by previous work does not mean the project should not consider a design that could support future habitat. The USFWS memo stated:

*“A variety of suitable habitats for the western pond turtle, a State-listed species of concern, are present within the Coyote Creek watershed. These habitats include aquatic, riparian woodland, and adjacent upland. Adults have been observed at various locations in Coyote Creek (SCVWD 2005). The stream channel downstream from Los Coches Creek has a small, constant flow throughout the year, and may provide suitable aquatic habitat for the western pond turtle. However, steep channel slopes do not provide suitable nesting habitat for western ponds turtles within the study area. Lower Berryessa and Lower Penitencia creeks do provide some marginal basking habitats within the channel; yet this species has not been documented to occur. The Corps has determined*

*that due to the limitations in suitable habitat, the project would have no effect on State-listed species as well (Corps 2013).”*

3. The Corps has not adequately addressed sedimentation issues within the Project area.

The *Final Independent External Peer Review Report for the Berryessa Creek, Santa Clara County, California, General Reevaluation Study (GRS) Final General Reevaluation Report and Environmental Impact Statement/Environmental Impact Report* contained the following statement regarding sedimentation issues within the project area:

*“Although the report presents overwhelming evidence of sedimentation issues within the project area, neither the impact of sedimentation issues on the channel design nor details on the maintenance activities with relation to sedimentation have been presented. In addition, there are insufficient details on the maintenance activities with relation to sedimentation. The Panel has expressed significant concern about the lack of details on the operation and maintenance (O&M) plan and has identified the need for a detailed O&M plan to ensure the design assumptions concerning sedimentation are valid.”*

This issue has not been addressed in the tentative order. This is especially troubling as the Tentative Order indicates the O&M plan will not be completed until after the project is completed.

Furthermore, the RWQCB Staff Memo dated April 16, 2016, entitled *Geomorphic Indications For Long-Term Depositional Environment On Berryessa Creek In The Upper Berryessa Creek Flood Risk Management Project*, also outlines the following sedimentation concerns, which have not been addressed:

*Meetings with the Corps and District later clarified that the Upper Berryessa Creek Flood Control project will not be influenced by any upstream changes in maintenance activities or new bypass or other additional project features. The new explanation for the assertion of reduced sediment loading to the Project reach was that the Project will reduce channel bed and bank erosion. According to their modeling assumptions, this is responsible for a sediment load reduction of approximately 50 percent. In an interagency meeting on January 4, 2016, the design consultants and Water Board staff clarified that the HEC-RAS model used in Project design does not model channel bank erosion and therefore does not provide outputs on the stability of channel banks. Therefore this assumption was not based on either empirical or analytical information that is defensible.”*

*“Moreover, the Corps’ response to the peer reviewer’s concerns about sediment maintenance is that the future sediment maintenance needs would be addressed in the Operations, Maintenance, Repair, Rehabilitation, and Replacement Manual (O&M Manual) the Corps would prepare during the preconstruction and project design phase (Revised Final EIS, March 2014). We note, however, that the Corps has stipulated the O&M Manual will not be completed until after the project is constructed (Interagency meeting of January 4, 2016), suggesting that the Corps has not fully addressed sediment maintenance needs in the Project design.”*

4. The SCVWD existing Stream Maintenance Program (SMP) – intended to be used by the Corps to replace the required O&M Manual and to guide an Adaptive Management Plan– is

in the process of being updated, and in its current or future form, may not address the issues needed for this project.

GCRCO has already raised concerns that SCVWD's implementation of its existing program is not in compliance with the approved EIR and mitigation requirements – particularly in the area of herbicide application. The program is due for a renewal and future conditions are unknown. In light of that, and the concerns outlined in Item 3 above, reliance on this plan for the stated purposes is concerning.

5. Insufficient detail has been provided to evaluate the adequacy of the adaptive management plan.

Details are important. For example, there is a requirement for the geomorphology report to be prepared after 5 measurable flood events, but as has been discussed with the Guadalupe River Flood Control Project AMT, details such as which gage is used and what period of record is used, are important to decision-making and determination of whether objectives have been met.

6. The Mitigation and Monitoring Plan has not been developed.

It is hard to justify moving the project forward without clarity on what that mitigation will be required. We do not understand how the RWQCB can make a finding regarding the adequacy of mitigation in the absence of a mitigation and monitoring plan. A 2:1 mitigation of stream length or vegetation may or may not provide adequacy dependent on the specifics of the proposed mitigation site.

Furthermore, the monitoring should be developed in sync with the Santa Clara Valley Habitat Plan (HP), pursuant to the following excerpt:

*“The Implementing Entity will also coordinate and share monitoring and other experimental results with other regional restoration and management programs. A well-coordinated and scalable monitoring program design will enable the Implementing Entity and others to measure and evaluate change in resources and threats in individual reserves, across the entire Plan area, and within the ecoregion. Such coordination requires standardization of protocols, sampling design, and training of personnel, as well as integrative data analyses.”*

7. The project is not in compliance with the Santa Clara Valley Habitat Plan, even though it falls within its regional planning area.

Berryessa Creek is repeatedly mentioned with the HP; the following are several examples from Volume 2 (pages 2-45, 2-47). Additionally, the HP represents that Berryessa Creek flood control projects will be built within HP-recommended design elements.

*Examples of projects partially funded through the Coyote Watershed Stream Stewardship Plan include the Berryessa Creek Project and the Lower Silver Creek between Interstate 680 (I-680) and Lake Cunningham. In designing projects through both programs, SCVWD uses methods that balance flood protection with protection of streams and natural resources. Examples of these methods include expanding the inchannel flood plain in areas where the existing channel is highly constrained, and installing bypass*

*channels to reduce the quantity of water flowing through natural streams during high flows, thus reducing flooding and scouring potential. These flood-protection technologies help keep streams as natural as possible.*

*Berryessa Creek—I-680 to Old Piedmont Road. Berryessa Creek is a tributary of Coyote Creek located in San José. The project extends approximately 2 miles between I-680 and just upstream of Old Piedmont Road. Currently the creek has sections that are natural, a section that is a trapezoidal concrete channel, and a concrete lined in-stream sediment basin. Specific design details for this project area have not been developed at this time; however, they will be consistent with the design elements described above.*

8. The project is not in conformance with the voter-approved purpose of Santa Clara Valley Water District's (SCVWD) Safe, Clean Water & Natural Flood Protection Program.

This project has been funded in part by this SCVWD program, which was approved in 2012 by two-thirds of voters. The project does not meet the community's needs and values, as stated on the SCVWD's website:

*"In November 2012 the voters of Santa Clara County overwhelmingly supported Measure B, the Safe, Clean Water and Natural Flood Protection Program. Developed with input from more than 16,000 residents and stakeholders, this 15-year program was created to match the community's needs and values."*

*"The voters of Santa Clara County clearly recognize the importance of a safe, reliable water supply. They value wildlife habitat, creek restoration and open space. They want to protect our water supply and local dams from the impacts of earthquakes and natural disasters."*

Summary:

Overall, it would appear that Berryessa Creek is being relegated to an armored flood control channel, and any ecological improvements to it – or any other creek – are left unspecified, other than the mitigation ratios. GCRCD requests that the RQQCB delay order adoption until the outstanding questions have been answered and the missing plans, manuals, etc. have been developed and circulated for public review. Please do not hesitate to contact us if you have any questions regarding the issues raised in this letter.

Sincerely,

Stephanie Moreno  
Executive Director  
[smoreno@gcrcd.org](mailto:smoreno@gcrcd.org)