



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

PUBLIC NOTICE

PROJECT: NOTICE OF AVAILABILITY FOR THE FERC ORDER COMPLIANCE PROJECT

PUBLIC NOTICE NUMBER: 2013-00327S
PUBLIC NOTICE DATE: October 1, 2020
COMMENTS DUE DATE: November 1, 2020

PERMIT MANAGER: Mr. Keith Hess

TELEPHONE: 707-443-0855

E-MAIL: keith.d.hess@usace.army.mil

1. **INTRODUCTION:** Valley Water (POC: Christopher Hakes (408) 630-3796), 5750 Almaden Expressway, San Jose, CA 95118-3686, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill into jurisdictional waters of the United State associated with the construction of infrastructure for public safety and environmental protection elements needed in order to meet the Federal Energy Regulatory Commissions (FERC) Order issued on February 20, 2020. In response to the order issued by FERC Valley Water has developed the FERC Order Compliance Plan (FOCP) to address the issues related to safety at the Anderson Dam. The Interim risk reduction Measures (IRRM) developed within the FOCP includes the Anderson Dam dewatering to a water surface elevation of 488 feet beginning by October 1, 2020, the Anderson Dam Tunnel, Reservoir Bank and Rim Stability Improvements, Cross Valley Pipeline Extension, the Coyote Percolation Dam Replacement, and the implementation of the Coyote Creek flood management measures, all located in the City of Morgan Hill and San Jose, within Santa Clara County, California. The Corps has reviewed the application and determined that the dewatering of the reservoir is not a regulated activity and the Coyote Creek flood management measures will not take place within jurisdictional areas. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The proposed project is located within the Coyote Creek watershed and includes the Anderson Dam Reservoir in the City of Morgan Hill and additional infrastructure in the City of San Jose, Santa Clara

County, California. The project consists of four broad components within and downstream of the Anderson Reservoir. The Anderson Dam tunnel goes through the Anderson Dam and extends downstream approximately 2,500 feet after existing the dam to a confluence with the historical channel of Coyote Creek (center coordinates, latitude 37.165514° N and longitude -121.628919° W). The Reservoir Bank and Rim Stability Improvements would occur at various locations within the Anderson Reservoir where potential instabilities will be monitored and buttressed if needed during the dewatering of the reservoir (center coordinates, latitude 37.155903° N and longitude -121.596597° W). The Cross Valley Pipeline Extension has an outfall located approximately 900 feet northeast of the intersection of Monterey Road and Kalana Avenue (center coordinates, latitude 37.176479° N and longitude -121.703269° W). The Coyote Percolation Dam Replacement is located along the eastern side of the Coyote Creek Trail adjacent to Metcalf Park within the City of San Jose (center coordinates, latitude 37.176479° N and longitude -121.703269° W).

Project Site Description: Nineteenth century orchards, row crops, population expansion and water management actions changed the drainage patterns within the watershed and eliminated many of the wetland seeps on the valley floor. As the result of the construction of the Anderson Reservoir during the early 1950's for water supply and groundwater management via in-stream percolation, riparian habitat within Coyote Creek became more contiguous and dense due to summer release which keep the Coyote Creek in a perennial state. Currently vegetation types within the project limits reflect both the historic condition, with sparse, open patchy riparian habitat interspersed with ruderal grasslands to dense riparian woodland and scrub where reservoir releases influence

stream flow patterns. Presently, the project area maintains a mix of urban, suburban, and agricultural land use. Within the project area, there are approximately 63.64 acres of potentially jurisdictional waters. This includes approximately 0.11 acre of wetlands and 63.54 acres of other waters of the U.S. Other waters of the U.S. are comprised of 0.08 acres of intermittent stream, 4.38 acres of perennial stream, and 59.08 acres of reservoir.

Project Description: As shown in the link to the project description (<https://www.valleywater.org/anderson-dam-project>), the applicant proposes to construct the new Anderson Dam Tunnel (ADT) which will consist of a new reservoir inlet and 8-foot diameter reservoir lake tap, a new diversion, outlet structure, discharge channel, constructing weirs to control flow between the south and north channels, installing RSP for bank protection, and reopening the original Coyote Creek northern channel downstream of the existing dam. The historic channel had been filled in following the construction of the dam in the 1950s. The construction of the northern channel will create an additional 1.2 acres of other waters of the U.S.

Valley Water has developed Avoidance and Minimization Measures to address secondary impacts associated with the construction of the ADT and the long-term dewatering of the reservoir. The initial dewatering and keeping the reservoir drained for a prolonged period of time may reactivate areas of inactive landslides along the reservoir. In response Valley water has developed a monitoring plan and various measures to mitigate potential landslides such as filling of cracks, concrete slabs, and buttressing the toes of slides. The construction of the Cross Valley Pipeline Extension, in conjunction with the installation of chillers at the upstream end of the Cold Water Management Zone (CWMZ) would augment flows while the reservoir is offline, providing recharge in critical percolation zones and maintaining cool water for federally listed steelhead downstream of the dam. The pipeline extension would allow the flexibility to release imported water for recharge purposes in the lower reaches of the CWMZ, while making smaller releases of chilled imported water that can be blended with native water, at the upstream end of the CWMZ in order to provide suitable habitat for steelhead while Anderson Reservoir is offline. Finally, the Coyote Percolation Dam Replacement would be constructed to safely pass the higher flows anticipated to occur once the the ADT is operational. The existing outlet is capable of discharging 500 cfs and with the construction of the new ADT the combined discharge during a draw down would

be 2,500 cfs. The existing dam at the Coyote Percolation Pond is only capable of handling flows up to 800 cfs. A new rubber bladder dam would be installed that would be capable of being rapidly lowered (deflated) in advance of high flow events. A bladder dam can be operated (deflated/inflated), without entering Coyote Creek, faster and safer than manually removing the existing flashboards of the dam, which currently requires operating an excavator in Coyote Creek to remove or reinstall the flashboards.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is to provide IRRMS to address public health and safety issues due to the dam's inability to safely pass flood flows associated with the probable maximum flood (PMF) or to draw the reservoir down in a timely manner following a significant seismic event, while continuing to maintain a critical portion of the water supply for the County of Santa Clara.

Overall Project Purpose: The overall project purpose serves as the basis for the Section 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is to minimize risks to public safety for individuals living downstream of the Anderson Reservoir while maintaining one of Valley Waters primary water supplies for domestic use and groundwater recharge within the project area.

Project Impacts: The project would permanently impact 0.11 acre of jurisdictional seasonal wetlands and 24.18 acres of other waters of the U.S. The project would temporarily impact up to 39.46 acres of jurisdictional other waters of the U.S. There would be no permanent loss of jurisdictional wetlands and other waters as a result of the project. However, there would be a gain of 1.2 acre of other waters of the U.S. as a result of the project.

Proposed Mitigation: Valley Water is proposing the following mitigation for other required state and federal authorizations. Impacts to riparian zones would be mitigated through restoration of existing riparian zone habitat within the project area, by developing and implementing a plan to save large woody debris for future

instream projects, implementation of a bank rehabilitation project at the CVP extension outfall, and developing and implementing a plan in coordination with Santa Clara County using Coyote Creek Native Ecosystem Enhancement Tool (CCNEET) to target invasive plant removal, or other appropriate actions within or adjacent to the Cold Water Management Zone. Valley Water would also provide the following: 1) Contributing \$1,000,000.00 plus approximately \$500,000.00 in supportive engineering towards work to alleviate the fish migration barrier at Singleton Road; 2) reopening the Coyote Creek northern channel to pass to FOCP releases; 3) implementing additional fish rescue and relocation in Coyote Creek; 4) use of the chillers to manage temperature of imported water in the upstream end of CWMZ; 5) implement fish ladder improvements at the Coyote Percolation Dam for low flow passage; 6) Development and implementation of a wetland and riparian habitat dry back plan; 7) Development and implementation of Phytosphthora management plan; 8) payment of fees to the Santa Clara Valley Habitat Conservation Plan; and 9) acquire or elevate residential homes within the flood plain downstream of the dam.

Project Alternatives: USACE has not endorsed the submitted alternatives analysis at this time. USACE will conduct an independent review of the project alternatives prior to reaching a final permit decision.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver thereof is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The applicant has recently submitted an application to the California State Water Resources Control Board (SWRCB) Division of Water Rights – Water Quality Certification to obtain water quality certification for the project. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed if the SWRCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the SWRCB to act.

Water quality issues should be directed to the Eric Bradbury, California State Water Resources Control Board Division of Water Rights – Water Quality Certification, P.O. Box 2000, Sacramento, California, 95812-2000

Coastal Zone Management: Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the state’s coastal zone management program. Generally, no federal license or permit will be granted until the appropriate state agency has issued a Consistency Certification or has waived its right to do so. The project does not occur in the coastal zone, and a *preliminary* review by USACE indicates the project is not likely to affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the California Coastal Commission.

Other Local Approvals: The applicant will be applying for other local governmental authorizations for the project as needed.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): The Federal Energy Regulatory Commission (FERC) is the lead federal agency for this project. Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's regulations at 40 C.F.R. § 1500-1508, and USACE regulations at 33 C.F.R. § 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. USACE’s final NEPA analysis will be incorporated in the decision documentation that provides

the rationale for issuing or denying a Department of the Army Permit for the project. The final USACE NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, the FERC initiated emergency consultation process with both the USFWS and the NMFS to address the project's potential adverse effects to the following species: the federally-threatened Central California coast steelhead (*Oncorhynchus mykiss*) and its designated critical habitat, the federally threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*) and its designated critical habitat, threatened California red-legged frog (*Rana draytonii*) and its designated critical habitat, threatened Central Distinct Population Segment of the California tiger salamander (Central California tiger salamander) (*Ambystoma californiense*), endangered Coyote ceanothus (*Ceanothus ferrisiae*), endangered Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), endangered Santa Clara Valley dudleya (*Dudleya setchelli*), and endangered Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*). Critical habitat has been designated for the Central California tiger salamander but does not occur within the action area for the proposed project. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those

species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, or the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, the FERC determined that the project had the potential to adversely affect EFH downstream of the dam for species managed under the Pacific Coast Salmon Fishery Management Plan and requested consultation with NMFS. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRSA of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains any required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project is not likely to affect sanctuary resources. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce or his designee.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this project, the FERC will be

responsible for determining the presence or absence of historic properties or archaeological resources and the need to conduct consultation. A programmatic agreement regarding the Project has been signed by FERC, Valley Water, the County of Santa Clara Parks and Recreation, and USACE regarding the Project's potential for adverse effects on historic properties. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. If unrecorded archaeological resources are discovered during project implementation, those operations effecting such resources will be temporarily suspended until the conclusion of Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a practicable alternative to the project that would result in less adverse impacts to the aquatic ecosystem while not causing other major adverse environmental consequences. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

6. PUBLIC INTEREST EVALUATION: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest

factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State, and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Keith Hess, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, San Francisco, California 94102-3404; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent or by contacting the Regulatory Permit Manager by telephone or e-mail (cited in the public notice letterhead). An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <https://www.spn.usace.army.mil/Missions/Regulatory>.