Santa Clara Valley
Urban Runoff
Pollution Prevention Program

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Submitted via email and hard copy on April 12, 2010

April 12, 2010

Ms. Jan O'Hara
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Proposed Amendments to the Water Quality Control Plan for the San Francisco Bay Basin – *Addition of Surface Water Bodies and Beneficial Uses*

Dear Jan:

This letter is submitted on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP or Program) regarding the proposed amendments to the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) that would add surface waters and beneficial uses. The SCVURPPP is an association of 13 cities and towns[1] in the Santa Clara Valley, the Santa Clara County and the Santa Clara Valley Water District. Program participants are regulated under a common NPDES permit to discharge municipal stormwater to South San Francisco Bay. Since its inception, SCVURPPP has been a recognized leader in stormwater management and monitoring in the San Francisco Bay region, and continues to be dedicated to improving the quality of our water bodies.

The Program appreciates the opportunity to submit comments regarding the proposed amendments.[2] As a municipal stormwater program, we are very interested in the proposed additions since this amendment could have future ramifications regarding the operation of municipal stormwater conveyance systems. Additionally, we are very familiar with both the current and historical conditions of creeks in the Santa Clara Valley and existing/potential beneficial uses based on the extensive monitoring of creeks/rivers and surveys that the Program has conducted on behalf of municipalities in the South Bay. These data have been previously

[1] Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga and Sunnyvale.

[2] In addition to these technical comments, SCVURPPP's counsel will be submitting legal comments under separate cover which are hereby incorporated by reference.

submitted to the Water Board staff as part of SCVURPPP's and the co-permittees annual reports in compliance with the stormwater NPDES permit and are hereby incorporated into the record on this proposed Basin Plan amendment by reference.

The following comments and recommended improvements are provided to the proposed amendments and are consistent with the current state of knowledge regarding existing/potential beneficial uses in water bodies in Santa Clara County. The comments and recommendations are based in part on our review of the cited references contained in the Water Board's Staff Report. In addition, we provide some additional comments and recommendations along with relevant citations.

Santa Clara Basin Specific Comments and Recommendations:

1. **Clarify the Extent of Spatial Coverage for Beneficial Uses Identified in the Surface Water Body Beneficial Use Documentation Tables Contained in Appendix C & Used as Support for Basin Plan Amendment Table 2-1** – The surface water documentation tables in Appendix C broadly identify specific beneficial uses throughout an entire water body. This approach can lead to misapplication of water quality objectives to segments of water bodies that do not and cannot possibly support a particular beneficial use. Ideally, beneficial uses should be designated by water body segments[3] and by seasons, especially where they are only based on no or limited data.[4] This would help minimize interpretive problems and avoid significant future expense and burdens that would otherwise be required to modifying use(s) (i.e., to de-designate, establish a subcategory, and/or apply seasonal uses) in order to provide clarification and/or provide the Water Board and its staff with appropriate flexibility in terms of taking associated regulatory actions. We understand that this approach is not without its own burdens. However, because those will be much smaller than the burdens required to correct/clarify use designations after they become part of the Basin Plan, we recommend that the Water Board staff:

   1) conduct a thorough spatial evaluation of the references they cite as "evidence and databases" in the Staff Report (see Appendix C) and which have been purported to have been used to support the recommended use designations contained in the proposed Basin Plan Amendment, and

   2) summarize the analysis and documentation in a sufficient format (such as a table) that (at a minimum) allows Water Board members and the public to understand the degree to

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[3] Use descriptions in the current Basin Plan, should be used to designate the waterbody's downstream segment with a WARM designation, and its upstream segment with a COLD designation. This approach would accommodate, in part, the spatial variation in the stream network. The State of Ohio pioneered this approach in 1978 and since then, it has been adopted by at least twelve other states (Environmental Resources Coalition 2006). It is our understanding that the State of California is also actively exploring this approach (Ode and Schiff 2009).

Environmental Resources Coalition. 2006. Review of Tiered Aquatic Life Uses for Selected States. Presentation to the Missouri Clean Water Forum Tiered Aquatic Life Use Group. http://www.erc-env.org/Tiered%20Aquatic%20Life%20Uses031506.pdf

[4] The definition of Beneficial Uses should provide flexibility to include seasonal considerations. For example, the States of Ohio, Oregon, and Idaho to name several examples (Oregon Department of Environmental Quality 2003) currently allow the Use definition structure to accommodate spatio-temporal variation inherent in the environment

Oregon Department of Environmental Quality. 2003. A description of the information and methods used to delineate the proposed Beneficial Use designations, Attachment H. Oregon Department of Environmental Quality Staff Report. http://www.deq.state.or.us/WQ/standards/uses.htm

which current data either does or does not support the designation of a potential and/or existing beneficial use in an entire water body.

The above analysis is mostly relevant to uses that apply to coldwater and migratory species (i.e., COLD, RARE, MIGR and SPWN). For example, our preliminary review of references cited by Water Board staff provide clear evidence that COLD, SPWN and MIGR exist in some but not all segments of Stevens Creek below Stevens Creek Reservoir. Specifically, due to the reservoir blocking the migration corridor of migratory species (e.g., Steelhead Trout), the MIGR and SPWN uses do not and cannot exist above the reservoir. In addition, we have attached examples (Attachment 1) that illustrate how we recommend the data and analysis be presented as part of the water body fact sheets presented in Appendix C to clearly describe the spatial extent of uses along with the evidence that is being cited to support the proposed beneficial use designation.

Further, and regardless of whether the above is acted on, we also recommend the following approach be used in Appendix C to better clarify the intended application areas for the proposed use designations and avoid overly broad designations that could require burdensome and resource consuming actions, including the potential need for delisting or limiting use designations in whole or in part:

a) **Where Data Exist** – In this case, it should be easy to identify in Appendix C the segment to which the use designation(s) are intended to apply and which of the specific uses are to be activated for future regulation of that segment. See the example in Attachment 1 and the example noted above for Stevens Creek.

b) **Where Data are Limited and/or do not Exist** - In this case, we request that the use not be shown as existing or presumptive. In addition, we request that the use be identified in an alternative manner that does not activate the proposed use designation without further Water Board action. Activation would occur when data become available to support the formal designation that there is an existing use present in the segment in question. (Perhaps such water segments could be identified in Appendix C as "PF = possible future designation in whole or in part; needs further study".)

2. **Lake Lagunita (Reservoir)** – No data are provided to support the proposed COLD use. The rational provided states "Cold fresh water habitat, based on relationship to other water bodies in the watershed". We request the data be provided to support the use designation, and if no data are available, this proposed use designation should be deleted.

3. **Felt Lake (Reservoir)** – No data are provided to support the proposed COLD use. The rational provided states "Cold fresh water habitat, based on relationship to other water bodies in the watershed". We request the data be provided to support the use designation, and if no data are available, the proposed use designation should be deleted.

4. **Adobe Creek** – Based on our review of information in Leidy, R.A., G.S. Becker, B.N. Harvey (2005), and National Marine Fisheries Service steelhead distribution database, we find no data to support the Water Board staff recommendation that COLD, SPWN or MIGR are beneficial uses in this creek. None of the references provided, or information

from field surveys conducted (and previously provided to the Water Board staff) by SCVURPPP[5] provide evidence that Steelhead Trout (*Oncorhynchus mykiss*) or other coldwater or migratory species are present or were historically present in this water body. Therefore, the proposed COLD, SPWN and MIGR use designations should be deleted.

5. **Ross Creek** – We support and encourage groups like Ross Creek Neighbors to continue their work on protecting local water bodies. However, based on our review of information provided by Ross Creek Neighbors, and all of the other evidence and databases cited in the Staff Report, the COLD use designation recommended by the Water Board staff is not supported. Specifically, the NMFS (2006) citation contained in the Water Board staff report did not identify Ross Creek as supporting Steelhead Trout and the presence of other cold water species has not been documented. Therefore, the proposed designation of COLD for Ross Creek should be deleted.

6. **Canoas Creek** - Our review of the information presented by GCRCD (2007) as well as the other cited evidence and databases identified in the Water Board staff report does not support the COLD use designation in Canoas Creek. Additionally, GCRCD did not request that Canoas Creek be designated for COLD use. Therefore, the proposed designation of COLD for Canoas Creek should be deleted.

7. **Canada de Los Osos Creek** – Our review of data cited in Leidy et al. (2005) reference indicates that the data describing the presence of Steelhead Trout are from 1940 and are based on the planting of fingerling trout that year. The referenced citation and data do not indicate that the creek has been able to sustain a COLD use and thus does not provide evidence to support a COLD designation. Therefore, the proposed designation of COLD for Canada de Los Osos Creek should be deleted.

8. **Comments on REC 1 and REC 2 Proposed Designations** – Consistent with our recommendations noted above in Comment 1, we have evaluated the data collected by SVCURPPP and have provided specific recommendations based on that data as discussed below:

    a) **No Data/Information Exist to Support a Use Designation** – Table 1 contains a summary of those waterbodies where, to our knowledge, no SCVURPPP data/information are available regarding REC-1 and REC-2 uses, potential and/or existing. Because the proposed listing is not supported by data/information in the record, we strongly recommend that instead of designating these waters based on so-called "presumptive" REC-1 and REC-2 (or WILD) uses, the Water Board instead rely on the Basin Plan's existing "tributary rule" in those situations.[6] We make this recommendation for several reasons: First, the approach provides the Water Board and its staff with the greatest flexibility and thus allows ready activation of the concept of

[5] SCVURPPP (2007) SCVURPPP Monitoring and Assessment Summary Report, Santa Clara Basin Creeks 2002 – 2007. Prepared by EOA, Inc., Program Managers for the Santa Clara Valley Urban Runoff Pollution Prevention Program. 52 pp.

[6] Indeed the Water Board has successfully employed this tributary rule-based approach for approximately 25 years.

"presumptive uses" to particular tributaries and tributary segments where it is appropriate and supported by data in the future.[7] Second, as part of implementation of the new municipal regional stormwater permit (MRP) new data on the existence or lack of existence of REC-1, REC-2, and WILD uses in a number of these waterbodies and/or their sub-segments and the seasons in which they occur, if any, will become available and can be used to inform the application of the tributary rule in an appropriate and pin-pointed manner until such time as additional/refined use designations can be incorporated into the Basin Plan in an amendment supported with data. Finally, the most important reason to take this approach is not to place the Water Board and numerous local agencies in the position of having to spend significant resources to address the regulatory consequences of or, in the alternative, de-designate incorrect or overly broad (including spatially or seasonally) use designations in the future.[8]

b) **Data/Information Exist that Do Not Support the Proposed REC-1 Use Designation** - Table 2 contains a summary of waterbodies where data exist that affirmatively demonstrate that the proposed REC-1 designation is not in existence and unlikely to be supportable given conditions associated with the waterbody segment in question. The data/information citation is also provided. These citation reports are available on the SCVURPPP website (WWW.SCVURPPP.ORG) and were previously sent to the Water Board as part of NPDES annual reporting requirements. Because the proposed listing is contradicted by data/information in the record, we request that the proposed REC-1 listing be dropped for these waters and we also recommend that instead of designating them based on so-called "presumptive" REC-2 (or WILD) uses without REC-1, the Water Board instead rely on the Basin Plan's existing "tributary rule" in these situations for the same pragmatic reasons set forth in comment 8.a above

c) **Data/Information Exist that Do Not Support the Proposed REC-2 Use Designation** - Table 3 contains a summary of waterbodies where data exist that does not support the proposed REC-2 (or REC-1 or WILD) designation. The data/information citation is also provided. The citation reports are available on the SCVURPPP website (WWW.SCVURPPP.ORG) and were previously sent to the Water Board as part of NPDES annual reporting requirements. Because any proposed listing based on so-called presumptive uses is not consistent with data/information in the record, we request that the proposed listings for these waters be dropped.

We trust you find these comments useful and request that you make the changes and improvements suggested above prior to Water Board member consideration of the Basin Plan Amendment.

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[7] The alternative approach entailed in the current version of the proposed Basin Plan amendment would, in effect, lock the Water Board into overly-broad designations that are based on neither data nor analysis of the implications of the future regulatory actions that will be necessitated by them.

[8] Among other things, delisting could necessitate the expenditure of large amounts of resources on use attainability analyses (UAAs), CEQA-related documents, and associated appeals and litigation.

Please contact Chris Sommers at (510) 832-2852 ext. 109 if you have questions. We look forward to continuing to work with you further.

Sincerely,

Adam Olivieri, Dr. PH, P.E.
SCVURPPP Program Manager

cc: Bruce Wolfe, SFB Water Board
Tom Mumley, SFB Water Board
SCVURPPP Management Committee

Attachments:

1- Example Spatial Summary

2- Table 1. Proposed Waterbodies in Santa Clara Basin and Associated Beneficial Uses Where No Information is Available to Support the Proposed REC-1 and REC-2 Designation

3- Table 2. Comments provided by SCVURPPP on Proposed Recreational Uses for Waterbodies in Santa Clara Basin Where Information Exists that Does Not Support the Proposed REC-1 Use Designation.

4- Table 3. Comments provided by SCVURPPP on proposed Recreational Uses for Waterbodies in Santa Clara Basin Where Information Exists that Does Not Support the proposed REC-2 Use Designation.

Attachment 1 – Example Spatial Summary

Surface water body: San Tomas Aquino Creek
County: Santa Clara
Water body type: Perennial Stream, discharges to Guadalupe Slough

BU	Designation	Rationale and/or Source of Information	Spatial Extent Source of Information Pertains
COLD	E	Cold freshwater habitat, based on information in Leidy, R.A., G.S. Becker, B.N. Harvey. 2005, pg. 117.	Identifies coldwater habitat upstream of crossing with Quito Road.

Surface water body: Los Gatos Creek
County: Santa Clara
Water body type: Perennial Stream, tributary to Guadalupe River

BU	Designation	Rationale and/or Source of Information	Spatial Extent Source of Information Pertains
RARE	E	Leidy, R.A., G.S. Becker, B.N. Harvey. 2005, pg. 113. San Jose's Riparian Corridor Policy Santa Clara County Public Parks National Marine Fisheries Service steelhead distribution database	Identifies steelhead presence up to 29,813 linear stream-feet (crossing of San Tomas Expressway)

Attachment 2

Table 1. Proposed Waterbodies in Santa Clara Basin and Associated Beneficial Uses Where No Information is Available to Support the Proposed REC-1 and REC-2 Designation

Waterbody	Waterbody Type	Proposed REC-1	Proposed REC-2	SCVURPPP Comments
San Francisquito Creek	Perennial	E	E	No information
Lake Lagunita	Reservoir	E	E	No information
Los Trancos Creek	Perennial	E	E	No information
Deer Creek	Perennial	E	E	No information
Hale Creek	Intermittent	E	E	No information
Swiss Creek	Intermittent	E	E	No information
Lake Elsman	Reservoir	E	E	No information
Austrian Gulch Creek	Perennial	E	E	No information
Campbell Percolation Pond	Reservoir	L	E	No information
Los Capitancillos Percolation Ponds	Reservoir	E	E	No information
Guadalupe Percolation Ponds	Reservoir	E	E	No information
Calera Creek	Perennial	E	E	No information
Silver Creek	Perennial		E	No information
Fisher Creek	Intermittent		E	No information
San Felipe Creek	Perennial	P	E	No information
Las Animas Creek	Intermittent	E	E	No information
Packwood Creek	Perennial	E	E	No information
Hoover Creek	Perennial	E	E	No information
Otis Canyon Creek	Intermittent	E	E	No information
Canada de Los Osos Creek	Perennial	E	E	No information
Soda Springs Canyon Creek	Perennial		E	No information
San Tomas Aquino Creek – Lower Reaches	Perennial		E	No information

Attachment 3

Table 2. Comments provided by SCVURPPP on Proposed Recreational Uses for Waterbodies in Santa Clara Basin Where Information Exists that Does Not Support the Proposed REC-1 Use Designation.

Waterbody	Waterbody Type	REC-1	SCVURPPP Comments	Citation/ Source
Barron Creek	Intermittent	Not Supported	No public access was observed during field reconnaissance upstream of Foothill Expressway and downstream El Camino Real (this reach is concrete channel protected by fence) ; some access near recreational trail at bypass	SCVURPPP 2005
Adobe Creek	Perennial	Not Supported	No public access was observed during field reconnaissance between El Monte Rd (at Foothill College) and Hidden Villa Farm	SCVURPPP 2005
Bonjetti Creek	Perennial	Limited to Upper Segments	Public access observed during field reconnaissance and sampling events in upper reaches within Sanborn County Park	SCVURPPP 2005
McElroy Creek	Perennial	Limited to Upper Segments	Public access observed during field reconnaissance and sampling events in upper reaches within Sanborn County Park	SCVURPPP 2005
San Tomas Aquino Creek	Perennial	Limited to Upper Segments	Public access observed during field reconnaissance and sampling events in the upper reaches	SCVURPPP 2005
Ross Creek	Perennial	Not Supported	No public access was observed during field reconnaissance and at sampling events; creek is either concrete channel or earthen levee and is fenced off (SCVWD property); no evidence of REC-2 use	SCVURPPP 2009
Canoas Creek	Intermittent	Not Supported	No public access was observed during field reconnaissance and at sampling events; creek is either concrete channel or earthen levee and is fenced off (SCVWD property)	SCVURPPP 2009
Guadalupe Creek	Perennial	Not Supported	Public access and use (trails, small rock dams) was observed during field reconnaissance and sampling events. No recreational activities observed	SCVURPPP 2009

Attachment 3

Waterbody	Waterbody Type	REC-1	SCVURPPP Comments	Citation/ Source
Pheasant Creek	Intermittent	Not Supported	No public access was observed during field reconnaissance; appears to be private land	SCVURPPP 2009
Rincon Creek	Perennial	Limited	Potential public access was observed during field reconnaissance; Open Space District Land	SCVURPPP 2009
Los Capitancillos Creek	Intermittent	Not Supported	Potential public access was observed during field reconnaissance but no rec 1 observed; Open Space District Land	SCVURPPP 2009
Alamitos Creek	Perennial	Limited to Downstream Segments	No public access was observed in reach between Harry Rd and County Park (private ranches and residential area); public access downstream Harry Rd with evidence of REC1 (trails to creek)	SCVURPPP 2009
Arroyo Calero	Perennial	Limited to Downstream Segments	No public access was observed in reach between Harry Rd and Calero Reservoir (private ranchland and SCVWD property); public access downstream Harry Rd with evidence of REC1 (trails to creek)	SCVURPPP 2009
Herbert Creek	Perennial	Not Supported	No public access was observed during field reconnaissance; appears to be private land	SCVURPPP 2009
Barrett Canyon Creek	Perennial	Not Supported	Was not able to obtain access to creek for sampling; privately owned land.	SCVURPPP 2009
Lower Penitencia Creek	Perennial	Not Supported	No public access was observed during field reconnaissance and sampling event; concrete channel protected by fence	SCVURPPP 2008
Upper Penitencia Creek	Perennial	Limited Segments	Public access was observed at all sampling sites between Alum Rock Park and mouth. No public access above Alum Rock Park	SCVURPPP 2006 and 2008
Arroyo Aguague Creek	Perennial	Limited Segments	Public access was observed at all sampling sites between Alum Rock Park and mouth. No public access above Alum Rock Park	SCVURPPP 2006 and 2008

Attachment 3

Citations:

Screening-level Monitoring of Adobe Creek, Matadero/Barron Creek, Calabazas Creek, Sunnyvale East/West Channel and San Tomas Aquino Creek Watershed (SCURPPP FY 04-05 Annual Monitoring Report), Santa Clara Valley Urban Runoff Pollution Prevention Program, Prepared by EOA, Inc., September 15, 2005.

Upper Penitencia Creek Limiting Factors Analysis, Final Technical Report, Santa Clara ValleyUrban Runoff Pollution Prevention Program, Prepared by Stillwater Sciences & EOA, Inc., August 18, 2006.

Monitoring and Assessment Summary Report – *Coyote and Lower Penitencia*, Santa Clara Valley Urban Runoff Pollution Prevention Program, Prepared by EOA, Inc., September 15, 2008.

Monitoring and Assessment Summary Report – *Guadalupe River*, Santa Clara Valley Urban Runoff Pollution Prevention Program, Prepared by EOA, Inc., September 15, 2009.

Attachment 4

Table 3. Comments provided by SCVURPPP on proposed Recreational Uses for Waterbodies in Santa Clara Basin Where Information Exists that Does Not Support the proposed REC-2 Use Designation.

Waterbody	Waterbody Type	Proposed REC-2	SCVURPPP Comments	Citation/ Source
Ross Creek	Perennial	Not Supported	No public access was observed during field reconnaissance and at sampling events; creek is either concrete channel or earthen levee and is fenced off (SCVWD property); no evidence of REC-2 use	SCVURPPP 2009
Canoas Creek	Intermittent	Not Supported	No public access was observed during field reconnaissance and at sampling events; creek is either concrete channel or earthen levee and is fenced off (SCVWD property)	SCVURPPP 2009
Pheasant Creek	Intermittent	Not Supported	No public access was observed during field reconnaissance; appears to be private land	SCVURPPP 2009
Alamitos Creek	Perennial	Not Supported in Reach between Harry Rd and County park	No public access was observed in reach between Harry Rd and County Park (private ranches and residential area); public access downstream Harry Rd with evidence of REC1 (trails to creek)	SCVURPPP 2009
Arroyo Calero	Perennial	Not Supported in Reach between Harry Rd and Calero Reservoir	No public access was observed in reach between Harry Rd and Calero Reservoir (private ranchland and SCVWD property); public access downstream Harry Rd with evidence of REC1 (trails to creek)	SCVURPPP 2009
Herbert Creek	Perennial	Not Supported	No public access was observed during field reconnaissance; appears to be private land	SCVURPPP 2009
Barrett Canyon Creek	Perennial	Not Supported	Was not able to obtain access to creek for sampling; privately owned land.	SCVURPPP 2009

Attachment 4

Waterbody	Waterbody Type	Proposed REC-2	SCVURPPP Comments	Citation/ Source
Lower Penitencia Creek	Perennial	Not Supported	No public access was observed during field reconnaissance and sampling event; concrete channel protected by fence	SCVURPPP 2008
Berryessa Creek	Perennial	Limited to City park	Public access was observed at city park during field reconnaissance and sampling event (trails below road crossing).	SCVURPPP 2008
Arroyo de las Coches	Perennial	Limited to Upper Reaches	Public access was observed during sampling event (trails); County Park in upper reaches only	SCVURPPP 2008
Upper Penitencia Creek	Perennial	Not Supported in Reaches above Alum Rock Park	Public access was observed at all sampling sites between Alum Rock Park and mouth. No public access above Alum Rock Park	SCVURPPP 2006 and 2008
Arroyo Aguague Creek	Perennial	Not Supported in Reaches above Alum Rock Park	Public access was observed at all sampling sites between Alum Rock Park and mouth. No public access above Alum Rock Park	SCVURPPP 2006 and 2008

Citations:

Screening-level Monitoring of Adobe Creek, Matadero/Barron Creek, Calabazas Creek, Sunnyvale East/West Channel and San Tomas Aquino Creek Watershed (SCURPPP FY 04-05 Annual Monitoring Report), Santa Clara Valley Urban Runoff Pollution Prevention Program, Prepared by EOA, Inc., September 15, 2005.

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Monitoring and Assessment Summary Report – *Coyote and Lower Penitencia*, Santa Clara Valley Urban Runoff Pollution Prevention Program, Prepared by EOA, Inc., September 15, 2008.

Monitoring and Assessment Summary Report – *Guadalupe River*, Santa Clara Valley Urban Runoff Pollution Prevention Program, Prepared by EOA, Inc., September 15, 2009.