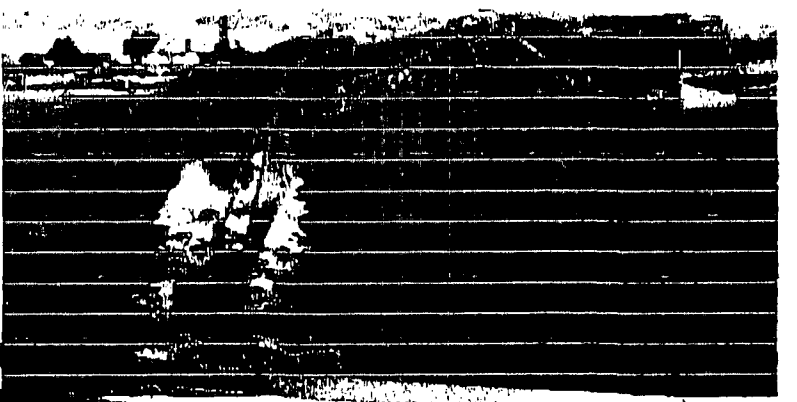
Santa Clara Valley Water District

Draft Environmental Impact Report and Stream Maintenance Program Report for the Multi-Year Stream Maintenance Program



March 28, 2001

2. California Regional Water Quality Control Boards and State Water Resources Control Board

a. RWQCBs Laws, Policies and Jurisdiction

The RWQCBs implement policies developed by the State Water Resources Control Board (SWRCB). The District is within the jurisdiction of two RWQCBs: the San Francisco Bay Region and the Central Coast Region. The San Francisco Bay Region has jurisdiction throughout the San Francisco Bay. Within the District's jurisdiction, this includes all those watersheds that drain to San Francisco Bay, primarily the Guadalupe and Coyote Rivers, but also many other smaller streams and tributaries. In this document, the area referred to as the Santa Clara Basin or North County is equivalent to the San Francisco RWQCB Region. The Central Coast RWQCB has jurisdiction along the central coast of California, which in the District's jurisdiction includes all those watersheds that drain to Monterey Bay, primarily the Llagas, Uvas, and Pajaro streams. In this document, the area referred to as the Pajaro River Basin or South County is equivalent to the Central Coast RWQCB Region.

The mission of the RWQCBs is to protect the beneficial uses of surface waters and groundwaters of their region. Each RWQCB develops a Basin Plan (also known as a Water Quality Control Plan) which identifies the beneficial uses of water bodies within their region, and establishes water quality objectives and implementation programs to protect those areas. Much of the actual review and requirements for permits related to the SMP are developed by the RWQCBs, therefore this discussion focuses on them rather than the SWRCB.

Under the Porter-Cologne Act, anyone proposing to discharge materials that could affect water quality (including discharges of fill or other materials to wetlands) may need to meet project specific "waste discharge requirements" from the RWQCBs. In addition, any applicant for a Section 404 permit under the federal CWA from the U.S. Army Corps of Engineers for an activity which may affect water quality also must apply to the appropriate RWQCB for Water Quality Certification under Section 401 of the CWA. The RWQCBs can waive Water Quality Certification or discharges that will not violate water quality standards.

Generally, projects can be regulated by both the Porter-Cologne Act and the CWA. In the past, RWQCBs have often issued a Water Quality Certification and waived the need for a waste discharge requirement. Recently, the San Francisco RWQCB has required waste discharge requirements for projects that do not fall within the jurisdiction of the Corps under the CWA. The RWQCBs water quality certification must occur prior to the issuance of a Section 404 permit by the Corps.

The RWQCBs, through the SWRCB, have jurisdiction over any water, surface or underground, including saline waters, within California (California

Water Code section 13050[e]). This jurisdiction extends to all waters of the State and to all waters of the United States (under the Porter-Cologne and CWAs, respectively). The San Francisco RWQCB specifically states that wetlands, marshes, and mudflats are within the definition of State waters.

The California Wetlands Conservation Policy (Executive Order W-59-93) establishes State guidelines for wetland conservation. The primary goal for this Executive Order is to ensure no overall net loss of wetlands and to achieve a long-term net gain in quantity, quality, and permanence of wetland acreage in California. In general, the RWQCBs requires that any application proposing loss of wetlands also provide mitigation within the same section of the region, wherever possible, so that there will be no net loss of wetland acreage and no net loss of wetland value when the project and mitigation are evaluated together.

The San Francisco Bay Water Quality Control Plan (1995) (also known as the San Francisco Bay Basin Plan) identifies the following beneficial uses of State waters in the Santa Clara Basin: agriculture; cold freshwater habitat (particularly as they support trout and anadromous salmon and steelhead fisheries); ocean, commercial and sport fisheries; estuarine habitat; freshwater replenishment; groundwater recharge; industrial service supply; fish migration; municipal and domestic supply; navigation; preservation of rare and endangered species; recreation; shellfish harvesting; fish spawning; warm freshwater habitat; and wildlife habitat.

The San Francisco Bay Basin Plan contains surface water quality objectives intended to maintain thriving aquatic ecosystems. Objectives are provided for bacteria, bioaccumulation, biostimulatory substances, color, dissolved oxygen, floating material, oil and grease, population and community ecology, pH, salinity, sediment, settable material, suspended material, sulfide, tastes and odors, temperature, toxicity, turbidity, unionized ammonia, specific chemical constituents, constituents of concern to municipal and agricultural water supplies, and radioactivity. Some of these objectives are specific numerical limits, whereas others are narrative. The San Francisco Bay Basin Plan also includes specific effluent limitations for some pollutants and more general discharge prohibitions in several water quality areas such as turbidity and toxicity.

The Central Coast Regional Water Quality Control Plan identifies similar beneficial uses for the Pajaro River hydrologic unit as noted above for the San Francisco Bay Region. Likewise, it contains similar water quality objectives. There are specific water quality objectives for the Pajaro River at Llagas Creek, which is within Santa Clara County.

b. Santa Clara Valley Water District Nonpoint Source Control Program

The District's activities are subject to regulation by the RWQCB for quality of stormwater discharge. A municipal National Pollution Discharge Elimination System (NPDES) permit covers non-point sources and dischargers. The NPDES permit for stormwater discharges grew out of a concern in the mid-1980's that southern San Francisco Bay (south of the Dumbarton Bridge) was an impaired water body because of pollution by nine metals and selenium. It was determined by monitoring that urban stormwater runoff was a greater contributor to this pollution than was discharge from wastewater treatment plants. In 1989 the SWRCB enlisted the District, Santa Clara County and 13 cities to develop individual control strategies to address the urban stormwater pollution problem. The NPDES permit for stormwater runoff was to serve as the individual control strategy for the District. Included in the permit was a Stormwater Management Plan, the objectives of which were to reduce stormwater-borne pollutants at their source. Measures include:

- monitoring of wet and dry flows to identify origin, type and concentrations of non-point source pollutants.
- identification and prevention of industrial and sanitary wastes discharge to the storm drain system.
- identification and elimination of any solid and liquid waste disposal into storm drains, channels or waterways.
- greater municipal effort to clean streets, collect solid waste, and prevent used oil and other hazardous wastes from entering storm drains, regular cleaning of catch basins and grease traps.
- promote and enforce local rules and regulations to control and eliminate pollutants from construction sites, industrial activities and transport services.
- increase public awareness of the NPS problem, including procedures for handling household wastes to prevent stormwater pollution.

Current regulations under the CWA require industrial dischargers and construction sites of 5 acres or more to obtain a Nonpoint Discharge Elimination System (NPDES) permit. The permit for each project must be supported by a Stormwater Pollution Control Plan which contains a site description of the nature of fill material and existing soil, runoff coefficient, percent impervious surface; a history of toxic materials at the site and list of pollutants likely to be present in stormwater discharge, proposed materials handling and storage, and best management control practices to reduce pollutants in stormwater discharges.

The NPDES permit was adopted by the RWQCB in June 1990 and revised and re-issued in 1995 and again on February 21, 2001.

In 1993, evaluation of the Individual Control Strategies showed that the south Bay water quality was still impaired. At that time, the RWQCB issued a Cease and Desist order to implement more stringent controls including a new multi-agency Stormwater Management Plan to address all pollutants, including USEPA criteria pollutants in addition to metals. In 1994, the stormwater management plan was to be developed with an emphasis on watershed management and reduction of heavy metals. This plan was accepted by the RWQCB in August, 1995. The plan was updated in 1997 as the "Urban Runoff Management Plan." The plan includes dates for compliance and performance standards for activities that each agency conducts to prevent nonpoint source pollution within their jurisdiction.

The Urban Runoff Management Plan, adopted in 1997, addressed District activities that could cause nonpoint source pollution, and thus be a contributor to cumulative nonpoint source pollution of waterways and the Bay. These activities include construction projects, materials handling and vehicle fueling and maintenance. The District, through its Urban Runoff Management Plan, has adopted Best Management Practices (BMPs) to minimize pollution from these sources. Examples of these BMPs include:

- prevention of site erosion and runoff from construction sites
- spill and leak prevention measures
- spill cleanup measures
- materials storage measures
- dumpster covering and maintenance
- cleanup procedures for paints, solvents, and adhesives
- vehicle fueling and cleaning measures
- treatment and disposal of concrete and other demolition debris
- treatment and disposal of hazardous debris (asbestos)
- dust control measures
- employee training and education

These activities are related to the way in which the District conducts its work at construction and maintenance sites, among other locations (see the discussion of the CDFG MOUs).

c. Total Maximum Daily Loads (TMDL)

Section 303(d) of the Federal CWA, requires States to identify waters that do not meet water quality standards after applying effluent limits for point sources other than POTWs that are based on the best practicable control technology currently available and effluent limits for POTWs based on secondary treatment. States are then required to prioritize waters/watersheds for total maximum daily loads (TMDL) development. States are to compile this information in a list and submit the list to USEPA for review and approval. This list is known as the 303(d) list of impaired waters (303(d) list).

TMDLs are documents that describe a specific water quality attainment strategy for a water body and related impairment identified on the 303(d) list. TMDLs may include more than one water body and more than one pollutant. The TMDL defines specific measurable features that describe attainment of the relevant water quality standards. TMDLs include a description of the total allowable level of the pollutant(s) in question and allocation of allowable loads to individual sources or groups of sources of the pollutant(s) of concern.

The SWRCB and RWQCBs have ongoing efforts to monitor and assess water quality, to prepare the Section 303(d) list, and to develop TMDLs. The State's most recent 303(d) list was approved in 1998. California's current

Section 303(d) list contains 509 water bodies, many for multiple pollutants. Impaired waterbodies in Santa Clara County include:

- All San Francisco Bay Segments - mercury, exotic species, PCBs, diazinon, selenium, chlordane, DDT, dieldrin, furans and dioxins
- South San Francisco Bay - copper, nickel
- SF Bay urban creeks - diazinon
- Guadalupe Watershed - mercury
- San Fransquito Creek - siltation
- Llagas Creek - sediment
- Pajaro River - sediment, nutrients, metals, grease, oil and pesticides

Development of TMDLs requires participation by an assigned stakeholder group. In 1999 the RWQCB and the District agreed that the previously established Watershed Management Initiative (WMI) would serve as the stakeholder group for TMDLs in South SF Bay, San Fransquito Creek and the Guadalupe River watershed. Other TMDLs in other locations have other assigned stakeholder groups.

d. Prior RWQCBs Permits

In recent years, the District has obtained water quality certifications from the RWQCBs at the same time it obtained Corps permits. Usually the District organized all its projected routine maintenance work for each year's summer construction season in one or a few packages and obtained one or a few permits covering the combined activities. Water quality certifications may have been simultaneously issued or waived for these packages. Separate packages were submitted for activities that did not require Corps permits but did qualify for waste discharge requirements.

e. New RWQCB Permits for the SMP

To obtain approval for activities under the SMP, the District is submitting the JARPA form to the San Francisco RWQCB for water quality certification, and Form WD200 for waste discharge requirements. To the Central Coast RWQCB, it is submitting a Water Quality Certification application and Form WD200. The District is requesting that RWQCB approvals of the SMP be valid for a period of 10 years.

For the purposes of the SMP, it is the District's interpretation of the applicable regulation that the RWQCBs can require water quality certification for these types of activities in streams: bank protection, minor fill activities such as in-kind repair of structures, and temporary cofferdams and access ramps.

It is also interpreted that RWQCBs can apply waste discharge requirements for these types of activities throughout the District's jurisdiction for streams and canals because of their potential for affecting water quality: sediment removal;

bank protection; minor work such as trash and debris removal, in-kind repair of levees and structures, and cleaning of culverts; and temporary cofferdams and access ramps. Recently, the San Francisco RWQCB has suggested that they may also apply waste discharge requirements to vegetation management activities that occur in streams and canals, particularly herbicide application. It is the District interpretation of applicable regulations that upland vegetation management activities are not regulated by the RWQCB.

f. SMP Consistency

1) Water Quality

The procedures used by the District to control pollution from its own vehicles and equipment used in maintenance activities are the BMPs developed for compliance with the Urban Runoff Management Plan/NPDES permit. The control of stormwater pollution from other nonpoint sources not directly under the District's control or jurisdiction are also regulated by the RWQCB through the municipal NPDES permit. Since these sources are not within the District's control or jurisdiction, but are under the land use authority of the cities or County, the District cannot directly control these sources or their abatement, yet still has outreach and preventive education.

Beyond vehicle and equipment operation, actual maintenance activities do not contribute additional nonpoint source pollutants into channels, but may cause pollution by releasing toxins already present in the sediment into the water column, or by moving contaminated sediments from one place to another.

Beyond vehicle and equipment operation, the actual maintenance activities -- sediment removal, vegetation management and bank protection -- do not contribute *additional* nonpoint source pollutants into channels, but may cause hazardous effects by releasing toxins already present in the sediment into the water column, or by moving contaminated sediments from one place to another. In these cases, the District is not responsible for the original presence of the pollutants in the stream, but the disturbance of the sediments may increase the chances that the pollutants will cause harm to aquatic life. This issue is discussed in Chapter IV-D-Hazards, Public Health and Safety.

2) Wetland Conservation

As stated in Chapter II, Project Description, the SMP has the potential to significantly affect the ecological and biological environment of Santa Clara County by cumulatively affecting wetland habitats, including tidal and non-tidal wetlands and riparian habitats. Though the Best Management Practices listed in the SMP would reduce these impacts, the District acknowledges that it would not be less-than-significant, if compensatory mitigation were not provided by the District to offset significant residual impacts that cannot be avoided through implementation measures or BMPs. SMP provides a series of specific wetland and other, non-worksite mitigation that are proposed within the same section of the region to offset cumulative maintenance impacts. The rationale and the scope of the measures is described in SMP Chapter 5.