

August 9, 2000

Nina Bicknese, Project Manager  
Sacramento District  
U.S. Army Corps of Engineers  
1325 "J" Street  
Sacramento, California 95814

Dear Ms. Bicknese:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Supplemental Environmental Impact Statement/Environmental Impact Report (DSEIS/EIR) for ***PROPOSED MODIFICATIONS TO THE GUADALUPE RIVER PROJECT, DOWNTOWN SAN JOSE, Santa Clara County, California*** (CEQ # 000193. # DS-COE-K36083-CA). Our comments are provided under the National Environmental Policy Act (NEPA), Section 309 of the Federal Clean Air Act, and the Council on Environmental Quality's (CEQ) NEPA Implementing Regulations (40 CFR 1500-1508). This DSEIS/EIR supplements a 1985 environmental statement prepared by the Corps of Engineers for the Authorized Project. On July 26, 2000 EPA met with the Corps, the Regional Water Quality Control Board and the U.S. Fish and Wildlife Service to discuss the proposal (National Marine Fisheries Service and California Department of Fish and Game participated via conference call).

The multi-purpose Guadalupe River Project is under phased construction in downtown San Jose. Approximately half the project has been completed, but not yet operational. The DSEIS/EIR addresses the environmental impacts associated with proposed *modifications* to the Federally-authorized Guadalupe River Project in downtown San Jose. The Corps developed modifications to the authorized project to (1) provide 100-year flood protection for downtown San Jose; (2) protect species recently listed under the Endangered Species Act; (3) meet conditions for State water quality certification under the Clean Water Act; and (4) further improve recreational opportunities along the river corridor. The modifications address mitigation measures along 2.6 miles of the Guadalupe River and two offsite mitigation areas. When all phases are completed, the project is designed to provide a 100-year level of flood protection for the downtown and surrounding areas, while avoiding, minimizing and/or mitigating adverse project effects on fish and wildlife resources, especially Federally-listed species.

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Construction of the Authorized Project's flood control components was stopped in 1996 due to concerns regarding the adequacy of the project mitigation, new and proposed listings under the Endangered Species Act, and receipt of a notice of intent to sue from four environmental organizations. As a consequence of these changed circumstances, the Corps and the Santa Clara Valley Water District (SCVWD) established a collaborative framework to resolve disputes on *mitigation* for this project. Others in the dispute resolution process included the City of San Jose, the San Jose Redevelopment Authority, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the California Department of Fish and Game, the State Water Resources Control Board, the Regional Water Quality Control Board, the Guadalupe-Coyote Resource Conservation District, Trout Unlimited, and the Pacific Coast Federation of Fishermen's Associations.

We commend the Corps, the SCVWD and others involved in the dispute resolution framework since their efforts resulted in project modifications reflecting two key Federal requirements, the Clean Water Act (CWA) and the Endangered Species Act (ESA). We are pleased to see these project refinements in the DSEIS/EIR and believe that the collaborative efforts have yielded a modified project which is a substantial improvement over that depicted in the 1985 EIS.

We are, however, seriously concerned regarding effects on the aquatic environment (including South San Francisco Bay) associated with the potential release of mercury-contaminated sediments. The Corps, on July 26, candidly recognized the need for a more complete analysis of issues related to mercury contamination prior to issuing its Final EIS (FEIS), a position which EPA supports and commends. The Guadalupe River has been designated by EPA as an impaired water body under the CWA, and appropriate mechanisms are being developed to address this problem. The DSEIS/EIR acknowledges that it is "difficult to predict" if the Proposed Action would increase exposure of mercury in sediments, an issue of significant concern to EPA under the CWA. The DSEIS/EIR acknowledges that an unresolved issue for the project hinges on State water quality certification under CWA Section 401 due to increases in mercury resulting from construction "in excess of maximum levels allowed in the regional water quality basin plan." We believe it is incumbent upon the Corps to proceed with a Federal civil works project only when it clearly, fully comports with Federal statutory requirements such as the CWA.

We are also quite concerned with the degradation and loss of habitat (wetlands, riparian areas) in the Guadalupe River watershed. We believe that further opportunities may be available to the Corps to avoid/minimize additional loss of riparian areas in connection with the construction of this project, as well as opportunities to restore previously-damaged areas as an element of mitigation for this project.

Based upon our review of the document and in light of the discussions on July 26, we assign a rating of EC-2, Environmental Concerns - Insufficient Information. Please refer to the attached "*Summary of Rating Definitions and Follow-Up Action*" for a more detailed explanation of EPA's rating system and to our attached comments on the DSEIS/EIR. We appreciate the opportunity to have been briefed by the Army Corps on the proposal and to

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provide comments on the SDEIS/EIR. Please send one copy of the FEIS to me at the letterhead address (code: CMD-2) when it is filed with EPA's Washington, D.C. office. If you have any questions, please call me or David Tomsovic of my staff at 415-744-1575.

Sincerely,

David Farrel, Chief  
Federal Activities Office

Enclosures:

- (1) "Summary of Rating Definitions and Follow-Up Action"
- (2) Detailed EPA Comments on DSEIS/EIR

cc: Terry Neudorf, SCVWD, San Jose  
Mark Littlefield, F&WS, Sacramento  
Mark Helvey, NMFS, Santa Rosa  
Khalil Abu Saba, RWQCB, Oakland  
Carl Wilcox, CDF&G, Yountville

## WATER QUALITY

### Sediment Control Trap to Reduce Mercury Loading to the Bay

The meeting held at EPA on July 26, 2000 regarding the project yielded a fruitful discussion of mercury contamination in the Guadalupe River Basin (including mercury in sediments), how flood control efforts along the River may affect the transport of mercury-contaminated sediments to South San Francisco Bay, and potential opportunities to control mercury as part of this project. A key point raised at the July 26 meeting is that this project offers a potentially significant opportunity for the Army Corps and the Santa Clara Valley Water District (SCVWD) to control (manage) the transport of mercury-contaminated sediments that eventually enter South San Francisco Bay, hopefully eliminating such contaminants from the Bay environment. The Corps expressed a willingness to evaluate the *feasibility* of a sediment control trap or other mechanism to reduce the amount of mercury-contaminated sediments entering the Bay. The project area from I-880 to Coleman Avenue was identified as a potential location for a sediment control trap or similar mechanism at the July 26 meeting.

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We appreciate the Army Corps' willingness to evaluate if this project can be designed, built and operated in a manner that reduces mercury loading into the Bay. We commend the Regional Water Quality Control Board, San Francisco Bay Region for its July 26 offer to assist the Corps in this regard. We strongly recommend that the Final EIS (FEIS) evaluate the feasibility of designing, building and operating the project in a manner that reduces, as fully as possible, the loading of mercury into the Bay.

As mentioned by EPA on July 26, an increasing number of Corps' civil works EISs have an "environmental restoration" component which reflects the Department of the Army's public commitment to environmental stewardship and environmental leadership. In several respects the DSEIS/EIR already recognizes the environmental sensitivity of areas and attempts to minimize impacts (e.g., efforts to protect anadromous fish species by providing cooler water temperatures).

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We believe that an effort to reduce mercury loading to the Bay would serve as a strong compliment to the efforts depicted in the DSEIS/EIR to improve fish and wildlife habitat and protect established beneficial uses. It would be in accord with the Council on Environmental Quality's (CEQ) requirement for Federal agencies to use "*all* practicable means . . . to restore and enhance the quality of the human environment and avoid or minimize *any* possible adverse effects of their actions upon the quality of the human environment." (40 CFR 1500.2(f), italics added).

In terms of analyzing impacts under NEPA, the FEIS should evaluate, in comparative fashion, the impacts (advantages and disadvantages) of removing these sediments from the Guadalupe River watershed and the Bay environment, as well as impacts from disposing the sediments at an approved facility. The view was expressed at the July 26 meeting that the sediments would be sent to an approved disposal facility outside the Guadalupe River Watershed.

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Because we presume that sediments would be de-watered prior to off-site disposal, the FEIS should address any impacts associated with de-watering. Please note that the sediment control trap or similar mechanism should not be located (if at all practicable) in waters of the United

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States, in part because the component facility would require maintenance that would be a continuing impact on waters of the United States.

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#### Significance of Mercury-Contaminated Sediments Re-suspended into Environment by Project

Volume 1 (page 5-21) discusses the potential transport of mercury in the Guadalupe River that could be affected by construction and operation of the project. Page 5-21 informs the reader how "it is difficult to predict whether the Proposed Action would increase exposure of mercury in bedload sediments." However, this same page asserts that construction and operational water quality effects from disturbance of mercury in channel sediments "would be less than significant."

It is perplexing why the DSEIS/EIR can say it is "difficult to predict" mercury-related impacts but then assert that such effects "would be less than significant," while not providing substantiation of the assertion regarding the (in)significance of mercury-related impacts. The conflicting statements on page 5-21 are further complicated by wording in Volume 1 (page S-11) that indicates that one unresolved issue for this project is State water certification under Section 401 of the Clean Water Act (CWA) due to "increases in mercury resulting from construction in excess of maximum levels allowed in the regional water quality basin plan."

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Such discrepancies should be clarified in the FEIS. From the perspective of disclosing impacts under NEPA, the FEIS should indicate whether construction and/or operation of the project would result in increases in mercury (whether or not such releases would be above or below applicable State regulatory limits) and, if so, effects upon the environment, including effects on fish/wildlife and water quality. The FEIS should also address if such releases would be consistent with the requirements of the regional water quality basin plan, and, if not, how the project would be modified or revised to ensure consistency with applicable standards found in the basin plan. The basin plan was developed by the Regional Water Quality Board and approved by U.S. EPA under authority of the CWA.

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#### Information on Mercury Contamination in the Guadalupe River Watershed

We recommend that the FEIS provide a discussion of mercury contamination in the watershed, including information on mercury contamination in Guadalupe River watershed sediments and a discussion regarding efforts to identify and/or remediate such contamination by local/State/Federal authorities.

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#### Clean Water Act Section 313

CWA Section 313(a) provides that a Federal agency engaged in "any activity" resulting in the discharge or runoff of pollutants shall comply with all applicable Federal and State requirements to the same extent as a private party. The statement in the DSEIS/EIR that the project could result in mercury levels "in excess of maximum levels" found in the regional water quality basin plan would be inconsistent with the wording found in CWA Section 313(a). The FEIS should acknowledge the need for the project to be consistent with CWA Section 313.

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#### Effects of Project Upon River Morphology and Riparian Areas

We appreciate that the Corps and the SCVWD propose bypass channels as the preferred method of flood control. We are concerned, however, about the proposed project and its affect upon the river's morphology and riparian areas. We understand that the proposed project will cause an overall increase in sediment deposition with areas of localized scouring. We are concerned that the planning level analysis of sediment deposition may have not fully considered the effect of different storm events (10-, 50- or 100-year) on overall sediment loading in the Guadalupe River. We recommend that the FEIS analyze this issue. As a matter of public disclosure under NEPA, it would be beneficial for the FEIS to address the overall change in sediment to the system as a result of building and operating the proposed project (including any capture of mercury-contaminated sediments and their disposal outside the Guadalupe River watershed). Any changes to sediment loading should be calculated annually and then considered over the life of the project (100 years), including any impacts that may be reasonably foreseeable with decreased (or increased) sediment loading.

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#### Control of Sediment Deposition

We are concerned about the use of invert stabilization structures and/or check dams to control sediment deposition in the Guadalupe River. The use of these structures may have impacts requiring analysis and public disclosure under NEPA. For example, use of such stabilization structures can affect downstream reaches by causing headcutting of streams and/or further destabilization of the reach. As discussed on July 26, we suggested that the level of the bypass inlets be constructed to allow minor changes in elevation. We believe this approach may be an appropriate solution which should be addressed in the FEIS. We are concerned that the project anticipates a continued loss of gravel in the channel bottom and proposes to replace the gravel. We assume this loss to be a one-time event. If it is anticipated to occur more frequently, the impacts of mining the gravel and transporting and placing it at the site should be addressed in the FEIS.

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#### Loss of Riparian Habitat and Adequacy of Mitigation

As discussed at the July 26 meeting, EPA is seriously concerned about the cumulative loss of riparian vegetation in Santa Clara County. It appears that the proposed project will result in direct loss of almost 2.0 miles (9,373 linear feet) of bank and almost 1.0 mile of channel bottom (4,433 linear feet) from armoring. The project will also directly impact 15.3 acres of riparian vegetation. In discussions between EPA and the SCVWD regarding their maintenance permit, their analysis indicated that loss of riparian vegetation from bank stabilization activities was a significant cumulative adverse impact. We support efforts to ensure that riparian mitigation commences before adverse impacts occur. However, we remain concerned that the proposed mitigation may not adequately offset the impacts. A number of riparian restoration/mitigation projects have not been fully successful, which gives rise to our concerns regarding this proposal. We note that most of the mitigation for this proposal would be at an off-site location by Guadalupe Creek. While we recognize that an insufficient area exists at the project site to perform mitigation, off-site mitigation typically requires a higher compensation ratio. In addition, conditions at the Reach A mitigation site are less than desirable for mitigation. For example, it appears that the area would have no buffer zone and it is unclear whether regular maintenance of the vegetation would be needed. These issues should be

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clarified in the FEIS.

We are concerned that the proposed planting would not replace the same functions that are projected to be lost due to bank armoring. Given the projected loss of riparian areas, increasing the density of vegetation by infilling with riparian plantings would not satisfactorily offset the total loss of jurisdictional acreage and the loss of restorable riparian habitat. We recommend that the Corps and the SCVWD evaluate the feasibility of removing rip-rap along an equivalent length of creek and adopting more environmentally benign flood control features. Lastly, although we strongly support the need to provide suitable water temperatures and rearing/spawning habitat for native fisheries, we are concerned that this may be at the expense of other types of habitat which are already fragmented and subject to degradation. Opportunities should be utilized to improve fishery conditions and protect riparian habitat to the fullest extent possible, not only in connection with this proposal but with other actions undertaken by the Corps and the SCVWD in the Guadalupe River watershed.

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## SEGMENTS 1-2 AND NO ACTION

Segments 1 and 2 of the project have already been built with impacts resulting to eight (8) acres of riparian vegetation and 4000 linear feet of shaded riverine aquatic (SRA) habitat. We recognize that the DSEIS/EIR included these impacts as part of the "No Action" alternative. However, it may provide more clarity if the FEIS defined an environmental baseline which would assume that no impacts from any portion of the project had occurred.

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## CUMULATIVE IMPACTS

1. The DSEIS (at 6.2.1) identifies nine (9) projects that are assessed in Chapter 6 on cumulative impacts. As discussed at the July 26 meeting, at least three other projects or activities in the Guadalupe River Watershed should be addressed in the cumulative impacts analysis. These are: (1) flood control and/or stream maintenance activities undertaken by the Santa Clara Valley Water District, the Corps or other parties; (2) mercury environmental restoration efforts by local, State or Federal authorities; and (3) commercial/residential/mixed use and other developments approved by local authorities under the California Environmental Quality Act.

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2. The DSEIS does not appear to reflect guidance issued to Federal agencies by the Council on Environmental Quality, *Considering Cumulative Effects Under the National Environmental Policy Act* (1997). We strongly recommend that, for each impact area, the Corps re-examine the project's cumulative impacts in light of CEQ's guidance to Federal agencies.

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## EDITORIAL COMMENTS

1. Volume 1 (page S-20) indicates that the Army Corps will be responsible for the short-term (3-year) monitoring results while the SCVWD will be responsible for annual reporting for years 4-100. The FEIS/R should clarify how it would be feasible to ensure that this commitment is carried out for such an extended period of time.

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2. We recommend that the FEIS identify the various sources of mercury contamination in the

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Guadalupe River Watershed. It appears that Figure 1.0-2 (map of watershed) may be a useful tool to depict this information.

3. Volume 1 (Section 1.5, Consultation and Other Requirements) addresses various regulatory requirements associated with the proposal. Section 1.5.1.4 addresses two specific elements of the CWA as they apply to the project: Section 404 and Section 401. There is no specific discussion in Section 1.5.1.4 regarding CWA Section 402 permits (National Pollutant Discharge Elimination System, NPDES). Section 402 may apply to the proposal, specifically, NPDES requirements on stormwater construction and discharges of pumped groundwater during construction to waters of the United States. We recommend that CWA Section 402 issues be incorporated in the discussion in Section 1.5.1.4.

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4. The FEIS should address whether the SCVWD's maintenance permit would apply once the project has been fully built or whether a separate maintenance plan would be developed and implemented.

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5. It is unclear if EPA was formally invited to participate in the collaborative process to date. This should be clarified in the FEIS. EPA Region IX's Water Division would be pleased to be a participant in future collaborative efforts. Please contact Rebecca Tuden at 415-744-1587 regarding future participation by EPA in the collaborative process.

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**SUMMARY PARAGRAPH FOR HQ OFA, MODIFICATIONS TO THE GUADALUPE RIVER PROJECT, DOWNTOWN SAN JOSE, CA.**

EPA expressed environmental concerns regarding effects on the aquatic environment associated with

the potential release of mercury-contaminated sediments and with the degradation and loss of wetlands and riparian habitat in the Guadalupe River watershed. EPA urged the Corps and the local project sponsor to avoid and minimize such impacts to the fullest extent and identify appropriate mitigation measures.