



US Army Corps  
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San Francisco District

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

PROJECT: Anderson Dam Seismic Retrofit

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PERMIT MANAGER: Sarah Firestone

TELEPHONE: (415) 503-6776

E-MAIL: Sarah.M.Firestone@usace.army.mil

## 1. INTRODUCTION:

Santa Clara Valley Water District (Valley Water, POC: Ryan McCarter, 408-630-2983), 5750 Almaden Expressway, San José, California 95118, through its agent, H. T. Harvey & Associates (POC: Steve Rottenborn, 408-722-0931), 983 University Avenue, Building D, Los Gatos, California 95032} has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to complete the Anderson Dam Seismic Retrofit Project, located in Santa Clara County, California. 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.*). The Federal Energy Regulatory Commission (FERC) will serve as the lead federal agency with respect to compliance with federal laws. Valley Water submitted an Application for Surrender of Exemption to FERC on February 20, 2024

([https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20240220-5207](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20240220-5207)). On April 23, 2024, USACE requested that FERC grant USACE cooperating agency status under the National Environmental Policy Act (NEPA) for the Anderson Dam Seismic Retrofit Project.

## 2. PROPOSED PROJECT:

**Project Site Location:** Anderson Dam and Anderson Reservoir are located near the junction of Cochrane Road and Coyote Road in Santa Clara

County, California, 0.8 miles east of U.S. Highway 101 (Cochrane Road exit). The project site is 18 miles southeast of the City of San José, and 2.5 miles northeast of the City of Morgan Hill. Anderson Reservoir is located on lands within unincorporated Santa Clara County, the City of Morgan Hill, and the City of San José (37.171° center latitude, -121.823° center longitude). The project site includes Anderson Reservoir, Anderson Dam, and other Seismic Retrofit Components; the Live Oak Restoration Reach Maintenance area; the North Channel Reach Maintenance area; the Sediment Augmentation Program; the Ogier Ponds restoration area (approximately 4 miles downstream of Anderson Dam); the Coyote Percolation Dam Phase 2 (approximately 10 miles downstream of Anderson Dam); and lands in the immediate vicinity of Anderson Reservoir and Coyote Creek that are owned by Valley Water and the County of Santa Clara, as well as portions of the Cochrane Road and Coyote Road rights-of-way (Figure 1).

**Project Site Description:** Anderson Reservoir, was constructed in 1950. It is a 235-foot-high earthen dam that measures 1,430-foot long by 900-foot wide and sits on the Coyote Creek-Range Front Fault. It holds over 89,000 acre-feet (AF) of water when full, with a surface area of 1,253 acres, more than all the other Valley Water surface water reservoirs combined and is therefore critical to the water supply of Santa Clara County. It is located on Coyote Creek,

approximately 1.5 miles downstream of Coyote Reservoir.

The upstream reaches of Coyote Creek and the watershed that feeds into Anderson Reservoir are largely undeveloped. The contributing streams to Anderson Reservoir include Upper Coyote Creek, Las Animas Creek, Packwood Creek, and other small streams that drain directly into the reservoir. Downstream of Anderson Dam, Coyote Creek flows approximately 32 miles north-northwest through many densely urbanized areas in Santa Clara County before reaching tidal waters, and another 8.5 miles before reaching the open waters of San Francisco Bay (Figure 2).

**Project Description:** As shown in the attached drawings, the proposed project consists of numerous project components that fall into six over-arching categories. Not all project components are regulated by USACE.

1. Seismic Retrofit Components: Project components related to the Anderson Dam facility upgrades and improvements to stabilize and mitigate potential seismic risks and comply with current public safety requirements and to meet FERC and Division of Safety of Dams (DSOD) safety requirements.

2. Conservation Measure Components: Project components designed to avoid and minimize adverse environmental impacts, and in some cases provide environmental benefits. These components would be implemented both during and after project construction and would reduce construction-related impacts and allow for managed aquifer recharge to support water supply requirements, while improving and maintaining wetted habitat for fish, wildlife and other groundwater dependent habitats. Many of these components align with the Fish and Aquatic Habitat Collaborative Effort (FAHCE) Phase 1 non-flow measures, as described in the Fish Habitat Restoration Plan (FHRP), and would provide improved fish passage, steelhead spawning and rearing habitat, and restored hydrologic functions.

3. Construction Monitoring: Project components include habitat and species monitoring during construction to document project effects on the

environment and guide future habitat restoration efforts.

4. Post-Construction Anderson Dam Facilities Operations and Maintenance: Project components that involve how proposed, permanent Anderson Dam facilities would be operated and maintained following construction. These Project components include implementation of the FAHCE-plus Modified flow measures at the Anderson Dam facility, post-construction monitoring, and post-construction maintenance. Post-construction dam operations are not regulated by USACE,

5. Post-Construction Conservation Measure Operations and Maintenance: Project components that involve how proposed, permanent Conservation Measure (CM) facilities would be operated and maintained following construction. These CM facilities include implementation of the Ogier Ponds CM, Phase 2 Coyote Percolation Dam Fish Passage Enhancements (Phase 2 Coyote Percolation Dam CM), and the Sediment Augmentation Program, as well as maintenance of the North Channel Reach and Live Oak Restoration Reach.

6. Post-Construction Project and FAHCE Adaptive Management Program: Adaptive management of all post-construction operations, and all habitat restoration CMs components would occur in accordance with the Project and FAHCE Adaptive Management Plan (AMP). Pursuant to the FAHCE Framework and recommendations from NMFS, a Project-specific ADSRP AMP has been developed. The project and FAHCE AMP includes four key elements to address key uncertainties regarding the level of ecological improvement that can be attained by proposed CMs: measurable objectives for steelhead and salmon fisheries and their habitats; compliance monitoring, validation monitoring, effectiveness monitoring and long-term trend monitoring; a menu of adaptive actions that may be implemented or refined to assure measurable objectives are met; and reporting. Post-construction dam operations are not regulated by USACE,

The locations of these project components are shown in Figures 3 and 6. Figures 4-5 show proposed project impacts, and Figure 7 shows the location of waters of the U.S. within the project area

and areas impacted by the FERC Order Compliance Project (FOCP).

**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 meet FERC and DSOD safety requirements.

**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 seismically retrofit Anderson Dam and Reservoir to meet FERC and DSOD safety requirements while minimizing impacts to aquatic resource functions in the watershed.

**Project Impacts:** The proposed project would result in impacts to a maximum of 1,244 acres of reservoir, 2.7 acres of spillway, 0.2 acre of pond, 2.4 acres of stream, and 0.5 acre of freshwater marsh. The project is anticipated to result in the loss of 3 acres of reservoir, 0.2 acre of pond, 0.4 acre of stream, and 0.5 acre of freshwater marsh. In addition, the Ogier Ponds conservation measure would result in a loss of 19.3 acres of pond (Ponds 1-5), 1.3 acre of stream, 3.7 acres of freshwater marsh, and 0.05 acre of wetland. Ogier Ponds would also result in the creation/restoration of 12.5 acres of stream and 4.5 acres of freshwater marsh.

**Proposed Mitigation:** Valley Water has proposed a variety of standard minimization measures, including maintaining downstream flows, removing temporary fills, restoring any temporarily impacted riffle-pool complexes, and monitoring water quality during construction. Proposed mitigation measures include separating Ogier Ponds from Coyote Creek, enhancing multiple reaches of Coyote Creek, and purchasing in-lieu fee credits.

**Project Alternatives:** Because the project is necessarily focused on Anderson Dam and Reservoir, the applicant has not proposed any off-site alternatives (i.e., at locations other than

Anderson Dam and Reservoir). On-site alternatives include:

1. No Project Alternative – The project would not proceed, and existing (post-FOCP) environmental conditions and Valley Water operations would be maintained. This alternative would provide limited incidental flood risk reduction because FERC requirements to restrict Anderson Reservoir water levels to a near deadpool would remain in place.
2. Flood Risk Reduction Alternative – This alternative would leave the existing Anderson Dam in place following completion of the FOCP and the Anderson Dam Tunnel Project. No project construction would occur as described in the Project Description. Following completion of the FOCP, Anderson Dam would be operated at a reduced capacity, consistent with FERC orders, to allow for incidental flood risk reduction, but the reservoir's ability to sufficiently support current and future regional water supply needs with water would be eliminated.
3. Removal of Anderson Dam and Provision of Alternative Water Supply Sources – This alternative would entail the complete removal of Anderson Dam, with no replacement. This would eliminate any flood protection provided by the dam incidental to storage of local water in the reservoir for water supply and groundwater recharge.
4. Downstream Fix Only – This alternative would restrict excavation to the downstream shell of the dam embankment by removing and replacing portions of the potentially liquefiable material, reconstructing the dam, and constructing a large buttress on the downstream slope of the embankment. The water surface level in the reservoir would be maintained at the FERC-restricted level (deadpool), so no further dewatering would be required during construction. The crest of the dam would be raised to elev. 656 feet (approximately 8 feet) to maintain the freeboard required. This alternative would not fully meet the project objective to seismically retrofit the dam. Shoring up the dam would fail to address the safety issues identified by FERC, DSOD, and Valley Water.
5. Reduction of Excavation from Anderson Dam Embankment – This alternative would excavate

less material from the dam. The reduction in volume would be achieved by retaining a larger portion of the core and portions of the upstream and downstream shells of the existing dam than the applicant's preferred alternative. Because of uncertainties regarding seismic performance due to the larger existing dam remnant and retention of some liquefiable material, FERC and DSOD have indicated that this alternative would not be approved.

6. Use of Offsite Borrow Materials and Cut Material Off-Hauled – This alternative would be similar to the applicant's preferred alternative, except that all borrow material for retrofitting the dam would be hauled in from an offsite borrow location and cut material would be hauled off rather than reused to avoid impacts to the Basalt Hill Borrow Area (BHBA) and avoid placing materials in the reservoir.
7. Increased Dredge Alternative – This alternative would remove a larger volume of sediment from the Anderson Reservoir bed compared to the applicant's preferred alternative, but all other components of the proposed project would remain the same.
8. Upland Stockpile and Disposal Locations Alternative – This alternative would use upland areas for some or all of the stockpile and disposal activities that are currently proposed to occur in waters of the state, within the bed of Anderson Reservoir.

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 Regional Water Quality Control Board (RWQCB) 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 RWQCB 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 RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

**Coastal Zone Management:** Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. Â§ 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 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 San Francisco Bay Conservation and Development Commission.

**Other Local Approvals:** The applicant will be applying for the following additional governmental authorizations for the project: a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife.

### 4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

**National Environmental Policy Act (NEPA):** FERC is the lead federal agency for the Proposed License Surrender. As a cooperating agency, USACE will coordinate with FERC, pursuant to 40 C.F.R. Section 1501.8(b) and 1508.7, 33 C.F.R. Part 325, Appendix B, paragraph 8(c), and 33 C.F.R. Section 230.16, to ensure that FERC's resulting NEPA documentation may be adopted by USACE to meet our regulatory

authority under Section 404 of the Clean Water Act. 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 Proposed Action. 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, FERC will be responsible for determining the presence or absence of Federally-listed species and designated critical habitat and the need to conduct consultation. 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, FERC will be responsible for determining the presence or absence of EFH and the need to conduct consultation. 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, FERC will be responsible for determining the presence or absence of historic properties or archaeological resources and the need to conduct consultation. 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 affecting such resources will be temporarily suspended until USACE concludes 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. Å§ 1344(b)). An evaluation pursuant to the Guidelines indicates the project is not 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 less environmentally damaging practicable alternative to the project that does not require the discharge of dredged or fill material into special aquatic sites. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

**6. PUBLIC INTEREST EVALUTION:**

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 via email to:

Sarah Firestone  
San Francisco District, Regulatory Division  
450 Golden Gate Avenue, 4<sup>th</sup> Floor  
San Francisco, California 94102-3404  
[Sarah.M.Firestone@usace.army.mil](mailto:Sarah.M.Firestone@usace.army.mil)

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>