
San Francisco Bay Regional Water Quality Control Board

June 30, 2021
WDID No. 2 43I006687

Robert Salisbury, Senior Planner
County of Santa Clara Planning Office
70 W. Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

Subject: Incomplete Application Submittal; Use Permit and Reclamation Plan Amendment; Stevens Creek Quarry, Santa Clara County

Dear Mr. Salisbury:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff reviewed Stevens Creek Quarry's June 11, 2021, Resubmitted Project Materials (specifically the letter to the Water Board) and the December 11, 2020, Reclamation Plan Amendment.¹ We again find the current submittal incomplete and inadequate related to the Surface Mining And Reclamation Act (SMARA) and to protect water quality and habitat as required to comply with the Water Board's regulations, policies and water quality objectives. Neither the December Reclamation Plan Amendment nor the June 11, 2021, Resubmitted Project Materials provide adequate analysis or assessment to support the proposed remedial and reclamation actions nor to assess future remediation and reclamation actions to protect and restore the streams.

Faulty Analysis Regarding the Obligation to Restore the Creek

We still find the application incomplete. We urge the County to require the Quarry, in the Reclamation Plan, to adequately evaluate past impacts of mining waste and operations (e.g., use of flocculant and sediment discharges) instream and the impacts of operating instream ponds, both to inform, and ultimately establish, appropriate restoration of streams. The streams that run through the Quarry and downstream from the Quarry are waters of the State subject to State water quality laws in addition to SMARA.

Regarding the issue of restoring stream channels at the Quarry and removing instream sediment ponds, Mr. Patrick Mitchell, attorney for the Quarry, notes in his June 11, 2021, letter that SMARA requires that reclaimed land "create no danger to public health or safety." In our previously submitted comments, included for reference in Mr. Mitchell's

¹ The Reclamation Plan Amendment is the ongoing deliverable required by the Surface Mining and Reclamation Act of 1975 (SMARA). Statutory citations refer to the California Public Resources Code.

letter, we explained that unmaintained creek channels and instream structures, such as the sediment ponds, dams, and berms, are inherently unstable in hillside topography and are a threat to public health and safety and beneficial uses, since their eventual failure may result in offsite flooding and mud flows. At this point, neither the Water Board nor the Quarry can state what constituents might remain in the creek or what threats the unmaintained instream sediment ponds and associated mining waste may pose to downstream public health and safety and beneficial uses after mining operations cease.

The definition of mining waste encompasses sediment and flocculant deposited in the instream ponds, as well as instream berms, culverts, overflow pipes, and weirs (Section 2730). The Quarry's current submissions fail to articulate how the Quarry will control and dispose of mining waste and rehabilitate the affected streambed channels and streambanks, as required by Section 2772.

Additionally, the Water Board has the obligation to protect beneficial uses of waters of the State pursuant to the California Water Code, and SMARA requires a reclamation plan to address proposed or potential beneficial uses. The *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan) lists the following beneficial uses for Swiss Creek (to which Rattlesnake Creek, where the instream ponds are located, is tributary): freshwater replenishment, cold and warm water habitats, wildlife habitat, and contact and noncontact water recreation. Stevens Creek Reservoir (approximately 1,000 feet downstream from the Quarry's instream ponds) has the following beneficial uses: municipal and domestic supply, groundwater recharge, commercial and sport fishing, cold and warm water habitats, fish migration, fish spawning, wildlife habitat, and contact and noncontact water recreation. Beneficial uses of any water body specifically identified in the Basin Plan generally apply to all its tributaries. The December Reclamation Plan Amendment does not account for the beneficial uses of Rattlesnake Creek.

Appendix A of the December Reclamation Plan Amendment details how the Quarry intends to address mining waste but fails to address instream mining waste and claims that such provisions may not apply. Previous Quarry statements seem to conclude that the permissive use of the instream ponds prior to enactment of the Clean Water Act exempts the Quarry from SMARA and State water laws, both at the time of the ponds' creation and now.

We disagree.

The Quarry must evaluate past impacts of mining waste and operations (e.g., use of flocculant and sediment discharges) instream and the impacts of operating instream ponds, both to inform, and ultimately establish, appropriate restoration of streams. We have withheld directly regulating the instream ponds and restoration of the streams pursuant to the Basin Plan and sections 13267 and 13304 of the California Water Code under the assumption that this evaluation and proposals for restoration, as appropriate, would be addressed via the revised Reclamation Plan. Therefore, we request that the County require the Quarry to consider the SMARA requirements and the California

Water Code regarding waste discharges, the Basin Plan regarding protection of beneficial uses of the streams, and current environmental laws when preparing Reclamation Plan amendments.

Vague Standards to Determine Success of Revegetation

Despite its revisions and additions, the December Reclamation Plan Amendment still lacks the metrics we requested in our comment letter responding to the Reclamation Plan Amendment the Quarry submitted to Santa Clara County on September 21, 2020. The Quarry must sample a sufficient number of plots to characterize site vegetation, but the Revegetation Plan in the December Reclamation Plan Amendment states only that sufficient plots will be sampled to provide an 80 percent level of confidence in the performance results of shrub planting areas and seeded areas, with no explanation of how the level of confidence will be assessed. The December Reclamation Plan Amendment also lacks details about the metrics to be used to assess species richness. The Revegetation Plan has targets for species richness but does not explain how species richness will be assessed. It appears that the Revegetation Plan may be confusing “percent cover by native species” with “species richness.” Species richness reflects the number of different native species present in a plot. In short, the regulations that accompany SMARA require a specificity that is not yet present in the Quarry’s Reclamation Plan Amendment.

Therefore, we further request that the County require the Quarry to consider the SMARA requirements, California Water Code, and Basin Plan regarding protection of beneficial uses of the streams and habitat when preparing reclamation plan amendments.

Conclusion

We appreciate the opportunity to comment on the Quarry’s June 11, 2021, Resubmitted Project Materials and the December Reclamation Plan Amendment. We find that the Quarry has insufficiently addressed water quality and habitat impacts of mining operations, instream ponds, and future restoration of beneficial uses. The Basin Plan, the California Water Code and SMARA require additional analysis and plans to protect beneficial uses through future reclamation (or Water Board orders). Santa Clara County Surface Mining Ordinance section 4.10.370.F.3 requires reclamation plan amendments to comply with the provisions of SMARA section 2772 and others. As described above, we find that neither the December Reclamation Plan Amendment materials nor the June 11, 2021, Resubmitted Project Materials comply with these requirements. To be clear, we are not at this point requiring the Quarry take actions to address the impacts of instream use of flocculent and sediment discharges, but to fully analyze and assess any impacts and propose concomitant mitigation or restoration, rather than assuming there

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are no impacts and no future mitigation or restoration needed, based on determinations related to previous environmental standards.

We urge the County to find the application incomplete as submitted, or until our comments are otherwise adequately addressed.

Sincerely,

Lisa Horowitz-McCann
Assistant Executive Officer