
San Francisco Bay Regional Water Quality Control Board

April 13, 2021

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Governor's Office of Planning & Research

Apr 13 2021

STATE CLEARINGHOUSE

Alameda County Water District
ATTN: Kerri Smyth (kerri.smyth@acwd.com)
43885 South Grimmer Boulevard
Fremont, CA 94538

Subject: San Francisco Bay Regional Water Quality Control Board Comments on the *Initial Study / Mitigated Negative Declaration, Vallecitos Channel Maintenance Project*, Alameda County Water District, Alameda County
SCH No. 2021030428

Dear Ms. Smyth:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Initial Study / Mitigated Negative Declaration, Vallecitos Channel Maintenance Project* (ISMND). The ISMND evaluates the potential environmental impacts associated with implementing the Vallecitos Channel Maintenance Project (Project).

Project Summary. The Alameda County Water District (District) proposes to perform maintenance of the Vallecitos Channel (Channel). The Channel is an engineered, earthen channel that extends nearly 12,000 linear feet from the California Department of Water Resources South Bay Aqueduct turnout to Vallecitos Creek. Under existing conditions, the channel requires maintenance to restore its design conveyance capacity. The Project will restore the Channel's design capacity and mitigate ongoing erosion of the Channel by implementing five types of bank stabilization measures: (1) removal of excess vegetation and accumulated sediment in the Channel; (2) the installation of bioengineered bank stabilization measures along portions of the Channel; (3) the installation of rock riprap slope protection (RSP) at the toe of bank at some locations; (4) the installation of RSP on the complete Channel bank at some locations; and (5) the repair of grouted RSP at existing drop structures in the Channel. The Project also includes upland drainage improvements and the enhancement of wetland and riparian habitat in portions of the Channel.

Summary. As is discussed below, the ISMND does not include a full and accurate assessment of the Project's temporary and permanent impacts to waters of the State.

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

The Project also lacks a mitigation plan with sufficient detail to demonstrate that the Project's temporary and permanent impacts to waters of the State can be mitigated to less than significant levels.

Comment 1. The District should consider revising the Project to include removing existing gabions from the Channel.

Section 2.4.1, *Proposed Project Treatments*, includes the following text on Page 2-22:

Note that willow stakes would not be inserted at two partial RSP sites immediately downstream of drop structures #10 and #13 (shown as treatment ID nos. 1 and 16 in Appendix A, Sheet C3). At these two specific sites, the RSP would be installed where existing gabions are currently failing and would be placed in a manner that supports the gabions to remain, serving as in-kind replacement.

Gabions are not considered an appropriate stabilization measure for channel banks. The metal mesh can provide an entrapment hazard to reptiles and amphibians and the metal used in the gabions tends to break down faster in aquatic environments than in upland environments. The Project should evaluate the feasibility of replacing the existing gabions with bioengineered bank stabilization measures.

Comment 2. The delineation of waters of the U.S./State may have expired.

In Section 3.4, *Biological Resources*, under section b,c. *Have a Substantial Adverse Effect on any Riparian Habitat, Federally Protected Wetlands or Other Sensitive Natural Community*, the following text appears on Pages 3.4-39 and 3.4-40.

The boundaries of wetlands and other waters of the U.S./state, which are regulated by the USACE and RWQCB, were delineated within the Project site by H.T. Harvey in February 2016.

Corps verified delineations are valid for five years. Please confirm that the Project site has a valid Corps-verified delineation.

Comment 3. Some permanent impacts are incorrectly described as temporary impacts.

In Section 3.4, *Biological Resources*, under section b,c. *Have a Substantial Adverse Effect on any Riparian Habitat, Federally Protected Wetlands or Other Sensitive Natural Community*, the following text appears on Pages 3.4-39 and 3.4-40.

More specifically, the Proposed Project would remove approximately 1,270 cubic yards of accumulated sediment and approximately 832 linear feet of dense perennial marsh vegetation (i.e., tule) in order to restore channel flow conveyance and to facilitate repairs to restore the access road. Sediment and vegetation management activities would impact a total of 0.69 acre of wetland and riparian habitat. Impacts to wetland habitats would be considered temporary as emergent vegetation is anticipated to regenerate

and recolonize the channel where it is removed within a 5- to 10-year period following Project completion.

Impacts to waters of the State are considered temporary if they can be returned to pre-Project topography and vegetation within one year of impact. Impacts that will change channel topography and vegetation and require between five and ten years to return to pre-impact conditions are considered permanent impacts. Please reclassify the 0.69 acres of impacts described as temporary on page 3.4-40 as permanent impacts and provide appropriate mitigation for 0.69 acre of permanent impacts to wetland and riparian habitat.

Comment 4. Placement of willow stakes in areas of new rock riprap slope protection (RSP) does not fully mitigate for the placement of rock riprap on portions of the Channel bank that are not currently armored.

In Section 3.4, *Biological Resources*, under section b,c. *Have a Substantial Adverse Effect on any Riparian Habitat, Federally Protected Wetlands or Other Sensitive Natural Community*, the following text appears on Pages 3.4-40 and 3.4-41.

Where partial and full rock slope protection treatments are proposed along the channel bank and where conditions allow, the Proposed Project includes staking of live willow through openings in the RSP below the 10-year flood elevation. Although placement of RSP would be considered an impact to waters of the U.S./state and wetland vegetation may be impacted during excavation and placement of RSP, willow establishment would result in a net increase of native riparian habitat since the areas where RSP is proposed are currently eroded and barren. Establishing new willow vegetation at the proposed RSP sites would increase habitat diversity and, at a minimum, result in a net zero change in wetland habitat area in the Vallecitos Channel.

While willow stakes can enhance the habitat value in a channel reach that has been armored with rock riprap, they do not provide complete mitigation for the placement of hardscape in an earthen channel. Placing willow stakes in newly placed rock riprap does not result in a net increase of habitat values within the channel. Please revise the ISMND to include sufficient and appropriate mitigation for placing new hardscape on the banks of the Channel.

Comment 5. Because the ISMND does not include a draft Habitat Mitigation and Monitoring Plan, the ISMND does not yet document that the Project's impacts to the Channel can be mitigated to a less than significant level.

In Section 3.4, *Biological Resources*, under section b,c. *Have a Substantial Adverse Effect on any Riparian Habitat, Federally Protected Wetlands or Other Sensitive Natural Community*, the following text appears on Pages 3.4-41 and 3.4-42.

The ecological benefits of the Proposed Project are dependent on the successful implementation of the proposed willow staking and wetland habitat enhancement activities. Implementation of **Mitigation Measures BIO-6 and**

HYD-1 would ensure impacts to jurisdictional wetlands and other sensitive habitat types are **less than significant with mitigation** by requiring preparation and implementation of a wetland habitat restoration monitoring plan.

Mitigation Measure BIO-6. Prepare and Implement Habitat Mitigation and Monitoring Plan (HMMP).

The District or its contractor will prepare a Habitat Restoration Mitigation and Monitoring Plan (HMMP) to guide the restoration effort for the on-site in-channel riparian/wetland benches. The HMMP will meet the permitting requirements of the USACE, CDFW, and RWQCB and will include the following information, at a minimum:

- Proposed summary of regulated habitat impacts and proposed restoration and enhancement actions and surface area;
- Goal of the restoration to achieve no net loss of habitat functions and values;
- Location of restoration site(s) and description of existing site conditions;
- Conceptual restoration design;
- Soil amendments and other site preparation elements, as appropriate;
- Planting and/or seeding plan;
- Short-term vegetation maintenance plan (to facilitate habitat establishment) including a conceptual irrigation plan (if needed);
- Post-construction ecological monitoring plan for a 5-year duration. The monitoring plan will describe monitoring methods, performance and success criteria, reporting requirements, and remedial measures/adaptive management strategies. At a minimum, success criteria will include the minimum surface area of restored and/or created mixed perennial marsh/intermittent stream and mixed riparian woodland habitats necessary to meet the habitat mitigation goal of no net loss of sensitive habitat functions. This metric will be measured by a qualified ecologist via a wetland delineation using the USACE wetland delineation protocol and mapping of the footprint of restored mixed riparian habitat. The monitoring plan will also include the success criterion of at least 50 percent average vegetation cover of native-dominated wetland indicator plant species within the restored/created perennial marsh and/or mixed perennial marsh/intermittent stream habitat.

Text on page 3.4-43 expands on the provisional nature of the HMMP.

Although the Project includes establishment of riparian/wetland benches, the Project is in the design phase and measures have not yet been developed to ensure the successful establishment of wetland vegetation on the benches.

Therefore, this impact is considered potentially significant. This impact would be mitigated through implementation of **Mitigation Measure BIO-6**, which requires preparation and implementation of a wetland habitat restoration monitoring plan for the on-site benches.

The Proposed Project would result in no net loss of other waters of the U.S. (i.e., conversion of waters to uplands). Impacts of the Proposed Project on federally and State protected wetlands would be less than significant.

As was discussed in Comments 3 and 4, the ISMND does not correctly identify the size of the Project's permanent and temporary impacts and the ISMND overstates the mitigation credit provided by placing willows stakes in RSP. In addition, the ISMND does not contain an actual HMMP. Without an actual HMMP to review, it is not possible to assess whether or not the HMMP will provide sufficient mitigation to mitigate the Project's impacts to waters of the State to less than significant levels. Please revise the ISMND to include an actual HMMP. Also, since text earlier in the ISMND acknowledges that it may take five to ten years for the Channel to recover from the Project's impacts (See Comment 3), the HMMP should include a minimum of 10 years of monitoring and maintenance.

At this time, the ISMND does not completely and accurately describe the full extent of temporary and permanent impacts to waters of the State and the proposed HMMP lacks sufficient detail to demonstrate that the Project's impacts to waters of the State can be mitigated to a less than significant level.

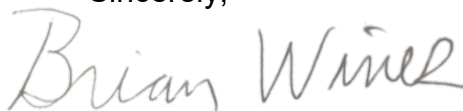
As the ISMND acknowledges, the proposed HMMP is still at a conceptual stage. The District should be aware that water quality certification for impacts to waters of the State will not be issued until the Water Board has approved a mitigation plan, including a maintenance and monitoring program, for the proposed onsite mitigation project. Conceptual plans are not appropriate to support the issuance of water quality certification. The present conceptual HMMP does not contain sufficient detail to demonstrate that the proposed mitigation will be sufficient to offset the Project's impacts to waters of the State. Proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act.

Conclusion

The current text of the ISMND does not quantify the full extent of the Project's temporary and permanent impacts to waters of the State and mitigation for those impacts is still at a conceptual stage. The District is encouraged to revise the ISMND to include an accurate quantification of the Project's temporary and permanent impacts to waters of the State and a HMMP with sufficient detail to demonstrate that Project impacts to waters of the State can be mitigated to less than significant levels. This revised ISMND should be circulated for public review of the HMMP by the resource agencies and other stakeholders. If the ISMND is adopted without providing acceptable mitigation proposals for Project impacts to waters of the State, it may not be adequate to support the issuance of CWA Section 401 certification and Waste Discharge Requirements for the Project.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at brian.wines@waterboards.ca.gov.

Sincerely,



Brian Wines
Water Resources Control Engineer
South and East Bay Watershed Section

cc: State Clearinghouse (state.clearinghouse@opr.ca.gov)
CDFW, Marcia Grefsrud (marcia.grefsrud@wildlife.ca.gov)