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July 6, 2022

Governor's Office of Planning & Research

July 8 2022

Billy Williams
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STATE CLEARINGHOUSE

Subject: Stream Maintenance Program Renewal, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2022050564, Santa Clara County

Dear Billy Williams:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Subsequent Draft Environmental Impact Report (SDEIR) from the Santa Clara Valley Water District (Valley Water) for the Stream Maintenance Program Renewal (Project) pursuant the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; hereafter CEQA; Cal. Code Regs., § 15000 et seq.; hereafter CEQA Guidelines).

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code. In an email from you on June 21, 2022, CDFW received an extension to the deadline to provide comments from June 7, 2022 to July 8, 2022.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

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proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Valley Water

Objective: The purpose of the proposed Project is to continue stream maintenance activities (e.g., sediment removal, bank stabilization, vegetation management, etc.) that are necessary to reduce flood risks, ensure structural integrity of Valley Water's facilities, enhance ecologic function, and ensure public safety.

The previous Environmental Impact Report (certified in 2002) covered activities of the Stream Maintenance Program (SMP) for the past 20 years as part of SMP-1 (2002 - 2011) and SMP-2 (2012 – 2022).

Location: The Project generally covers Santa Clara County, CA below the 1,000-foot elevation contour.

Timeframe: The Project is intended to cover a 10-year planning period between 2024 and 2033.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Valley Water in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that a Subsequent Environmental Impact Report is appropriate for the Project.

I. Project Description

Comment #1: The CEQA Guidelines (§§15124 and 15378) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 and 15378).

Issue: Without a clear and concise description of the Project and potential foreseeable phases of the Project, it is challenging for CDFW to provide sufficient review of the

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NOP, assess all potential impacts of the Project, and provide adequate mitigation measures to offset the impacts.

Specific impacts: Project activities, such as sediment and vegetation removal, bank stabilization, large woody debris removal, etc., could result in permanent and/or temporary loss of habitat types such as freshwater and saline wetlands, riparian, and stream habitat; and disturbance, injury, and/or mortality of terrestrial, semi-aquatic, and aquatic species. Project activities also have the potential for sediment, debris, deleterious materials to enter into the stream and temporary increases in turbidity.

Why the impact would occur: The proposed Project includes activities such as removing sediment from streambeds, repairing streambanks with hardscape or other methods, removing vegetation, etc.

Evidence impact would be significant: Project activities could alter habitat types with unnatural materials and/or remove resources that could serve as habitat for various species as well as create conditions that would be unfavorable to species. For example, removing sediment from streambeds could result in temporary increases in turbidity, loss of potential habitat, and disturbance to nesting birds.

Recommendation 1: The SDEIR should include a detailed description of each type or category of Project activities, including approximate number of projects per year, construction schedule, equipment, crew sizes, and operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features, in order for CDFW to evaluate and assess impacts that may occur from Project activities.

Recommendation 2: CDFW regional staff have participated in meetings and discussions with Valley Water, Santa Clara Valley Habitat Agency, which implements the Santa Clara Valley Habitat Conservation Plan and Natural Community Conservation Plan (Habitat Plan or HCP/NCCP), U.S. Fish and Wildlife (USFWS) and other resource agencies in incorporating the Project as a covered program in the Habitat Plan. CDFW recommends that detailed information be included in the SDEIR on specific activities proposed for coverage, Habitat Plan land cover types affected, types (permanent or temporary), location and frequency of impacts, Habitat Plan conditions to be followed or developed, and mitigation options. The SDEIR should describe the expected timeframe for coverage of activities during the Habitat Plan amendment process.

Recommendation 3: The NOP states that Valley Water updated SMP in 2011 (SMP 2) to reflect the 2012 through 2022 planning period, and a subsequent EIR for SMP 2 was certified in 2012. During agency meetings to discuss SMP, Valley Water presented an SMP 2 timeline of 2014-2023. Since SMP 3 is expected to cover activities from 2024-

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2033, the SDEIR should clarify the timeline for the SMP update and explain Valley Water's expectations for coverage of stream maintenance activities if a gap may exist between the terms of coverage of SMP 2 and SMP 3.

II. Environmental Setting

Comment #2: The Project location covers a large geographic area within Santa Clara County where various special-status species, nesting birds, and rare plants may occur.

Issue: Special-status species, nesting birds, and rare plants may occur within the Project area and without appropriate mitigation measures, the Project could potentially have a significant impact on these species. Special-status species that may be present within the Project area, include, but is not limited to, those listed below:

- Salt-marsh harvest mouse (*Reithrodontomys raviventris*) – State Endangered (SE) and Fully Protected (FP), Federal Endangered (FE)
- California black rail (*Laterallus jamaicensis coturniculus*) – State Threatened (ST) and FP
- California Ridgway's rail (*Rallus obsoletus obsoletus*) – SE and FP
- White-tailed kite (*Elanus leucurus*) – FP
- Tricolored blackbird (*Agelaius tricolor*) – ST
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*) – State Species of Special Concern (SSC)
- Western burrowing owl (*Athene cunicularia*) – SSC
- Western pond turtle (*Emmys marmorata*) – SSC
- Alameda song sparrow (*Melospiza melodia pusillula*) – SSC
- California yellow rail (*Coturnicops noveboracensis*) – SSC
- Alkali milk-vetch (*Astragalus tener* var. *tener*) – California Rare Plant Rank 1B.2
- Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*) – California Rare Plant Rank 1B.2
- Arcuate bush-mallow (*Malacothamnus arcuatus*) – California Rare Plant Rank 1B.2

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- Central California Coast steelhead (*Oncorhynchus mykiss*) – FT
- Longfin smelt (*Spirinchus thaleichthys*) – Federal Candidate and ST
- Pacific lamprey (*Entosphenus tridentatus*) – SSC
- Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*) – SSC
- California roach (*Lavinia symmetricus*) – SSC
- Sacramento hitch (*Lavinia exilicauda*) – SSC
- Monarch butterfly (*Danaus plexippus*) – Federal Candidate
- California tiger salamander (*Ambystoma californiense*) – FT and ST
- California red-legged frog (*Rana draytonii*) – FT and SSC
- Pallid bat (*Antrozous pallidus*) – SSC
- Western red bat (*Lasiurus blossevillii*) – SSC

Specific impact: Without appropriate avoidance measures for special-status species, potentially significant impacts associated with Project activities may include reduced reproductive success; reduced health and vigor; nest abandonment; loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young); burrow/den collapse; crushing as a result of burrow collapse; inadvertent entrapment or entrainment; impingement; habitat loss; introduction of non-native species; turbidity; introduction of debris and/or deleterious materials into stream habitats; and direct mortality. Unauthorized take of species listed as threatened or endangered pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Why the impact would occur: The proposed Project includes activities such as removing sediment from streambeds, repairing bank erosion, removing vegetation, use of herbicides, etc. Use of heavy equipment within the stream and riparian corridor would occur.

Evidence impact would be significant: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact native species.

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Recommended Potentially Feasible Mitigation Measures

Mitigation Measure #1: Habitat Assessment

A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for special-status species. For species in which habitat corridors are crucial, the habitat assessment should include review of habitat available within the specific Project location and adjacent habitats. If the Project may result in fragmentation of habitat, Project design(s) should be altered to prevent this fragmentation. If fragmentation cannot be avoided, structures should be designed to allow wildlife movement.

Mitigation Measure #2: Special-Status Plant Surveys

The Project area should be surveyed for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), by a qualified biologist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements, available at: <https://wildlife.ca.gov/Conservation/Plants>.

Mitigation Measure #3: Special-Status Wildlife Species Surveys and Bird Nest Surveys

The Project location should be surveyed for special-status wildlife species by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, focused surveys for special-status wildlife species presence, nests, or indicators of presence (e.g., bat guano and acoustic surveys) should be conducted. Survey and monitoring protocols and guidelines are available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols>.

If Project activities are to take place during the avian nesting season, CDFW recommends protocol-level surveys following established methodologies (e.g., point counts, area searches, etc.) be conducted within the Project area by a qualified biologist throughout the nesting season. These surveys should cover a sufficient area where suitable nesting habitat is present as well as an appropriate buffer surrounding nesting habitat. Surveys should be conducted prior to the start of any work that could result in loss of habitat or disturbance to nesting birds. As part of protocol-level surveys, pre-construction surveys should include a minimum of two surveys for active nests with the first survey conducted no more than seven (7) days prior to the start of Project activities, and the second survey conducted 48 hours prior to the start of Project activities.

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Mitigation Measure #4: Impact Analysis

The SDEIR should include complete descriptions of permanent and temporary impacts to habitats and species associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, and/or human presence. The SDEIR should also include appropriate and effective mitigation measures to completely avoid impacts to special-status species and other native plant and wildlife species and natural communities such as those indicated below. If complete avoidance is not feasible, the SDEIR should include minimization measures, and compensatory mitigation to offset all potential impacts.

Mitigation Measure #5: Special-Status Plant Avoidance

Special-status plant species should be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.

Mitigation Measure #6: Special-Status Wildlife Species and Nesting Bird Avoidance

If special-status wildlife species such as small mammals are found, work activities should stop, and the individual should be allowed to leave the site through its own volition. If Species of Special Concern wildlife species or active bird nests are found within or adjacent to the Project site, the qualified biologist should establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all Project-related activities. For nesting birds, the qualified biologist should increase the buffer if the birds are showing signs of unusual or distressed behavior such as defensive flights/vocalizations, standing up from a brooding position, or flying away from the nest. Buffers should be maintained until the eggs have hatched and young have fledged and are completely independent of the nest or roost site.

Mitigation Measure #7: State-listed Species Take Authorization

If State-listed species are identified during surveys and full avoidance of take is not feasible, take authorization through CDFW issuance of an Incidental Take Permit (ITP) would be required.

Mitigation Measure #8: Federally listed Species Consultation

CDFW recommends consulting with the USFWS, and National Marine Fisheries Service (NMFS) if the Project will impact federally listed species. Consultation with the USFWS and NMFS in order to comply with the Federal Endangered Species Act is advised well in advance of Project implementation.

COMMENT #3: The Project occurs within Santa Clara County and activities may occur

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within riparian habitat or other sensitive natural communities.

Issue: The Project area has the potential to contain water features subject to CDFW's lake and streambed alteration authority, pursuant Fish and Game Code § 1600 et seq. Project activities could result in temporary and permanent impacts to these features.

Specific impact: Work within freshwater marsh, wetland, and riparian features has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water features causing water pollution that is deleterious to fish and wildlife.

Evidence impact is potentially significant: Construction activities have the potential to impact downstream waters and to significantly impact freshwater marsh, wetland, and riparian communities.

Recommended Potentially Feasible Mitigation Measures

Mitigation Measure #1: Habitat Assessment

A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity supports freshwater marsh, wetland, and/or riparian communities. This survey should include, but not be limited to ponds, creeks or streams, and drainages.

Mitigation Measure #2: Notification of Lake and Streambed Alteration

Fish and Game Code §1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

III. Closely Related Past, Present, and Reasonably Foreseeable Probable Future Projects

Comment #4: Valley Water is a water district that implements and plans various projects within Santa Clara County.

Issue: Although activities proposed under the Project may occur within sections of streams and vary in location year to year, the Project may have considerable cumulative impacts within a stream or watershed.

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Specific impact: The SMP has been implemented for approximately 20 years (under SMP 1 and SMP 2) and the proposed Project plans to implement maintenance activities for the next 10 years. Additionally, Valley Water plans to continue to implement other types of larger-scale projects in the future such as flood protection projects, dam retrofits projects, etc., that could further impact a variety of habitat types and species.

Why Impact would occur: Implementation of projects within various habitat types in Santa Clara County.

Evidence impact would be significant: Implementing both small and large-scale construction, maintenance and repair projects will or may include impacts such as noise, groundwork, sediment and deleterious material entering the stream, loss or modification of habitat that could significantly impact native species and their habitats.

Recommendation: The SDEIR should identify reasonably foreseeable future projects in the Project location, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, § 15355). Although a project's impacts may be less-than-significant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of habitat for a special-status species should be considered cumulatively considerable.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports be and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

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CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist Valley Water in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Mayra Molina, Senior Environmental Scientist (Specialist), at (707) 428-2067 or Mayra.Molina@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

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