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July 8, 2022

Santa Clara Valley Water District  
Attn: Billy Williams  
SMP Renewal Scoping Comments  
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Governor's Office of Planning & Research

**Jul 11 2022**

**STATE CLEARINGHOUSE**

**Subject: Santa Clara Valley Water District Stream Maintenance Program Renewal, Notice of Preparation of Subsequent Environmental Impact Report, Santa Clara County (State Clearinghouse No. 2022050564)**

Dear Ms. Williams:

The San Francisco Bay Regional Water Quality Control Board (Water Board) appreciates the opportunity to comment on the Notice of Preparation (NOP) of a Subsequent Environmental Impact Report (SEIR) for Santa Clara Valley Water District's (Valley Water's) Stream Maintenance Program Renewal (Project), prepared by Valley Water (SCH No. 2022050564). Thank you for extending the comment period to July 8, 2022.

Since 2002, Valley Water has implemented the Stream Maintenance Program (SMP) under authorization from the Water Board, pursuant to the Clean Water Act, section 401, and California Water Code regulations for discharges of dredged or fill material (currently under Water Board Order No. R2-2020-0017 (SMP Order)). In accordance with the SMP, Valley Water manages about 275 miles of streams with routine maintenance activities to reduce flood risks, ensure structural integrity of Valley Water facilities, and protect public safety. SMP goals also include enhancement of ecological functions of wetlands and streams. The SMP covers wetlands and other waters below the 1,000-foot elevation contour in Santa Clara County, consisting of (west to east) the Lower Peninsula, West County, Guadalupe River, and Coyote Creek watersheds that are in the San Francisco Bay Regional Water Board jurisdiction, and a portion of the Pajaro River watershed which is in the Central Coast Regional Water Board jurisdiction.

The final SEIR will inform a revision to the SMP Manual, which contains the limits, methods, and procedures, for Valley Water to implement the SMP maintenance activities. The Water Board adopted the SMP Manual with the SMP Order. As stated in the NOP, the Manual will be updated with modifications to maintenance techniques and activities, work limits, and best management practices (BMPs). The Project is intended to cover the 2024-2033 period. With each SMP cycle spanning 10 to 12 years, the proposed Project is referred to as SMP-3, while the present SMP cycle is SMP-2 covering 2014-2023. Valley Water intends for this planning process to also include updating the SMP's environmental compliance documentation and renewing the SMP permits from the Water Board and other agencies.

As a responsible agency pursuant to California Environmental Quality Act (CEQA), we offer the following comments on the NOP to provide feedback on the Project's potential environmental effects and potential alternatives to avoid and minimize these impacts to aquatic resources. While our comments are applicable to the streams in the San Francisco Bay Water Board jurisdiction, we coordinate with Central Coast Water Board staff for consistency, as appropriate.

## Comments

### **Comment 1. Project Description Including Proposed Changes to the Stream Maintenance Program**

The proposed Project would have the following maintenance categories:

1. Sediment removal
2. Vegetation management
3. Bank stabilization
4. Management of animal conflicts
5. Minor maintenance
6. Downed tree management

The SEIR Project description should clearly characterize each maintenance category. The description should address the potential for dredged, excavation, and/or fill discharges, and other impacts to water quality in waters of the State, and describe how unavoidable impacts would be mitigated, especially in the context of issues in Comment 2 for compliance with the Water Board's requirements.

Examples of direct impacts to waters of the State from SMP maintenance activities include modifications to a water's substrate by hardening the bed or banks, habitat degradation by removing vegetation, and release of pollutants from construction vehicles. Examples of indirect impacts include removal of vegetation that provides shade, nesting habitat for birds and shelter for many types of wildlife, and nutrient cycling in a water's ecosystem. As a result of such impacts (and others), the SMP maintenance activities may adversely impact the beneficial uses of the affected waters including (but not limited to) cold freshwater habitat (COLD), warm freshwater habitat (WARM), estuarine habitat (EST), fish migration (MIGR), preservation of rare and endangered species (RARE), and spawning habitat (SPWN).

There are changes proposed for SMP-3 that should be clearly characterized in the SEIR. The following list of proposed changes are from three sources, but this list may be inaccurate or incomplete. We therefore urge Valley Water to clearly stipulate and characterize the proposed changes to the SMP in the SEIR so that the reviewers may understand and comment on the potential environmental impacts of the Project in the draft SEIR. This list is based on three sources: (1) the NOP filed with the California Department of Research and Planning (OPR) which manages CEQA documentation for the state; (2) the presentation and discussion from the scoping meeting with agencies that Valley Water convened on June 14, 2022, attended by staffs of the San Francisco Bay and Central Coast Water Boards, the California Department of Fish and Wildlife (CDFW), the Bay Conservation and Development Commission (BCDC), and the U.S. Environmental Protection Agency; and (3) the meeting notes from the agency meeting of June 28, 2022, that Valley Water convened with the U.S. Army Corps of Engineers (Corps) and the National Marine Fisheries Service (NMFS).

***Proposed Changes to the Stream Maintenance Program (SMP)***

- Additions to the SMP
  - Perform work at maintenance yards
  - Install and maintain trash booms
  - Mitigate unavoidable impacts via the Santa Clara Valley Habitat Plan
- Other modifications to the SMP
  - Eliminate the maximum size limit for trees that may be removed of 12 inches diameter at breast height (i.e., remove trees of any size)
  - Update the Program BMPs
  - Perform encampment/trash clean-up
  - Expand permanently mitigated areas
  - Retain the stream classification scheme with “modified” and “unmodified” categories, but eliminate the “modified with ecological value” category
  - Prepare Reach Characterization Sheets
  - Remove mitigation approach via invasive plant management
  - Eliminate maintenance of fish ladders and fish screens

**Comment 2. Avoidance & Minimization of Impacts, Alternatives Analysis, and Compensatory Mitigation**

CEQA review for the Project will inform Valley Water’s application to the Water Board for a water quality certification and waste discharge requirements pursuant to Clean Water Act, section 401 and California Water Code (Certification). In order for us to issue a Certification for the Project, Valley Water will need to show how the Project avoids and minimizes impacts to wetlands and other waters of the State to the extent feasible.

Specifically, the Water Board adopted U.S. EPA’s CWA Section 404(b)(1) “Guidelines for Specification of Disposal Sites for Dredge or Fill Material,” dated December 24, 1980 (Guidelines), in its *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan) for determining the circumstances under which filling of wetlands, streams, or other waters of the State may be permitted. Additionally, the State Water Resources Control Board adopted *Procedures for the Discharge of Dredged or Fill Materials to Waters of the State* (Procedures) on April 2, 2019. The Procedures incorporated the Guidelines and detail the procedures for the submission, review, and approval of applications for activities that could result in the discharge of dredged and fill material to waters of the State.

The Guidelines prohibit all discharges of fill material into regulated waters of the unless a discharge, as proposed, constitutes the least environmentally damaging practicable alternative (LEDPA) that will achieve the basic project purpose. As such, before issuing a Certification for the Project, we need to be able to find that the Project has avoided and minimized impacts to the maximum extent practicable as described in the Basin Plan Section 4.23.4 and the Procedures.

The existing SMP has a host of best management practices that help Valley Water to avoid and minimize impacts to waters of the State, such as work window restrictions; per-project, annual, and programmatic limits to dredged, excavated, and fill discharges; pre-construction surveys; and special status species avoidance and protection measures. Project planning, including avoidance and minimization of impacts, is informed by the stream-specific maintenance

guidelines for engineered (modified) streams and for unmodified stream to the extent feasible. It is our expectation that Valley Water will continue to develop, refine, and update, the Maintenance Guidelines as living documents under SMP-3, and this should be addressed in the SEIR. Information in the NOP and agency scoping meetings indicate there will be changes to the SMP BMPs, but these changes have not yet been described. The SEIR should clearly characterize proposed changes to the BMP program.

### Compensatory Mitigation

Some of the SMP activities cause unavoidable adverse impacts to waters of the State despite the avoidance and minimization measures used. Therefore, the SMP appropriately includes compensatory mitigation of impacts to waters of the State, and mitigation to address the requirements of other agencies including the Corps, NMFS, CDFW, BCDC, and the U.S. Fish and Wildlife Service. As summarized in the Basin Plan and the Procedures, compensatory mitigation is required for a project with unavoidable impacts to ensure the project meets the California Wetlands Conservation Policy requirements. The primary goal of the California Wetlands Conservation Policy is to ensure no overall net loss and to achieve a long-term net gain in the quantity, quality, and permanence of acreage and functions of waters of the State.

There are significant changes proposed for SMP compensatory mitigation that should be characterized in the SEIR. The Project proposes to modify SMP compensatory mitigation by removing the existing Invasive Species management Program (IPMP) from the SMP and adding the Santa Clara Valley Habitat Plan (VHP) as means for mitigation. We do not object to removal of the IPMP given Valley Water indicated that it intends to develop a separate program for invasive plant management. We look forward to participating in the planning process for that program.

The VHP, however, would not be acceptable to the Water Board for mitigation of the SMP activities. The standard mitigation mechanism under the VHP would not provide the kind of tracking that the Water Board needs to identify specific mitigation projects for approved impacts. Only an in-lieu fee (ILF) program could provide for tracking that the Water Board requires to ensure no net loss in waters of the State and compliance with the California Wetlands Conservation Policy requirements. At this time, since the ILF program is not yet developed, we would be unable to issue a Certification for the Project. Even after the Habitat Agency's ILF program is approved by the agencies, there is likely to be a deficit of mitigation credits for riparian impacts in Santa Clara County. This is important to point out because the VHP is meant to serve many parties, not just Valley Water.

Moreover, the VHP does not currently cover fish or riparian waters. As such, the SMP will require other means for compensatory mitigation of impacts to creeks and fish. We recommend Valley Water develop and implement restoration projects that have watershed- or reach-scale benefits instead of relying on the VHP. To that end, the SEIR should include additional proposals for compensatory mitigation other than the VHP. This would also facilitate our ability to timely issue a Certification for the Project.

### Holistic Approach for Compensatory Mitigation with Stakeholder Coordination

Because the proposed Project lacks a viable mitigation plan given that the VHP would not meet the Water Board's requirements, we encourage Valley Water to develop watershed- and reach-scale mitigation projects that could provide multiple, long-term benefits to offset the SMP impacts. This approach could potentially mitigate for recurring SMP impacts as well as other impacts under Valley Water's purview. We recognize that this approach for mitigation would

likely need to entail interdepartmental planning, scheduling, and financing among Valley Water's different divisions, and may also include other agencies such as the local municipalities and land owners, and Native American Tribes of the affected lands, wetlands, and streams. We recommend that Valley Water meet with us and the other agencies and stakeholders to vet this issue and potentially identify specific, viable projects to address a holistic approach for compensatory mitigation.

### **Comment 3. Trend Analyses of Recurring Impacts; Climate Change Effects on the SMP**

We recommend the SEIR include analyses of trends in SMP activities to identify recurring impacts or problematic zones that could benefit from watershed-based solutions that may entail a capital improvement project, thereby reducing the future maintenance needs. An example is a capital project to modify hydraulic constrictions that result in significant sediment deposition requiring maintenance.

The SEIR should also include analyses of climate change effects on the SMP such as increasing storm intensity, sea level rise, and warmer temperatures. Such effects should be considered for maintenance procedures and methods, as well as for planning mitigation of SMP impacts.

### **Comment 4. Specific Comments on Changes to the Stream Maintenance Program**

As noted in Comment 1, the proposed Project would significantly modify the existing SMP. As such, the SEIR should provide details to clarify the changes to the SMP (i.e., the differences between SMP-2 and SMP-3). Please note that even though we listed several changes proposed to the SMP in Comment 1, the list may be inaccurate and incomplete. Therefore, the SEIR should clearly identify the differences between SM-2 and the proposed Project for SMP-3.

To address the items listed in Comment 1 for SMP changes, as well as any other proposed change to the SMP, the SEIR should include details to characterize the item and explain how the item may result in adverse impacts to waters of the State, and/or contributes to meeting the California Wetlands Conservation policy and no net loss of acreage, functions, and values of waters of the State. The SEIR should also address (***but not be limited to***) specific comments below:

- Work in maintenance yards. Define "maintenance yard" and why Valley Water proposes this category for inclusion with the SMP. Provide maps for maintenance yard locations and the proximity of each yard to waters of the State (including groundwater). Describe the activities proposed for working at maintenance yards, and measures to prevent discharges to waters of the State or other potential impacts or discharges to waters of the State.
- Trash booms. Describe trash boom types, dimensions, and installation methods. Provide maps to show the locations for trash booms. Describe the operations and maintenance of trash booms.
- Mitigation via the Santa Clara Valley Habitat Plan. See Comment 2.
- Tree removals. The proposed change to vegetation management that would eliminate the 12-inch dbh size threshold for tree removals has also been referred to as the "Hazard Tree Program" and "Removal of Downed Trees." The SEIR should clearly describe the changes to vegetation management, and should distinguish between a hazardous tree, and a downed tree. To ensure that hazardous tree removals or downed tree removals would not diminish the existing SMP category for Management of Large Woody Debris, the SEIR

should clearly describe how the Management of Large Woody Debris category in SMP-2 will be retained in SMP-3.

- Update the program BMPs. Please provide details for the proposed changes.
- Perform encampment/trash clean-up. Provide details for how this activity would contribute to no net loss and meet the California Wetland Conservation Policy.
- Expand Permanently Mitigated Areas. Provide details for how this activity would contribute to no net loss and meet the California Wetland Conservation Policy.
- Stream Classification Scheme. This change would retain the “modified” and “unmodified” categories for classifying a stream but would eliminate the “modified with ecological value” category. Clarify in the SEIR how this would affect SMP activities and mitigation of SMP impacts in a modified or unmodified stream. We support removal of “modified with ecological value” because it suggests that there are stream reaches that, if modified, have no ecological value. This is not consistent with the beneficial uses of a stream pursuant to the Basin Plan.
- Reach Characterization Sheets. The Reach Characterization Sheets sound similar to the Maintenance Guidelines required for SMP-2, pursuant to the SMP Order, but in a distilled format of the Maintenance Guidelines. Please clarify the Reach Characterization Sheets and how they will be used for SMP maintenance planning, implementation, and/or mitigation. Regarding Maintenance Guidelines, the SMP would help to quantify maintenance needs for particular stream reaches, for example by determining stream flood flow capacity in real world conditions as opposed to evaluating it based on as-built plans. For instance, applying a Maintenance Guideline could allow for reduced frequency of vegetation management where field inspections and hydraulic analyses of existing conditions reveal that a stream has a greater tolerance of vegetation growth than the as-built design criteria. A Maintenance Guideline should be refined with updated stage-discharge criteria (pursuant to the SMP Order) and other empirical observations. The Maintenance Guideline requirements should be retained in the Project; accordingly, the SEIR should address this and how it is related to the Reach Characterization Sheets, as appropriate. (As noted in Comment 1, we expect that the existing Maintenance Guidelines procedures and document development will be retained in the Project.)
- Invasive Plant Management Program (IPMP). The IPMP is proposed to be removed from the SMP as a mitigation approach but in the NOP, section 4.1, includes invasive plant management. Please clarify the proposed maintenance activities for non-native invasive plant species management. Also, see Comment 2 for this topic.
- Eliminate maintenance of fish ladders and fish screens. Routine maintenance of fish ladders and screens has been covered since 2002 but Valley Water proposes to remove this activity from the proposed Project, according to the meeting notes of June 28. This raises a serious concern because a gap in fish ladder and fish screen maintenance poses a risk of degradation to beneficial uses including MIGR, SPWN, RARE, COLD, and WARM. The SEIR should discuss the reasoning behind the removal from the SMP. Our preference would be for these maintenance activities to be retained in SMP-3.

## Closing

We appreciate Valley Water's coordination with us and would welcome opportunities to participate in additional meetings with Valley Water and other authorizing agencies and stakeholders as details of the Project are developed, and to discuss our comments on the SEIR. If you have any questions, please contact Susan Glendening of my staff at (510) 622-2462 or by email to [susan.glendening@waterboards.ca.gov](mailto:susan.glendening@waterboards.ca.gov).

Sincerely,

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