



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



November 4, 2024

Michael Coleman, Environmental Planner  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118  
[MColeman@valleywater.org](mailto:MColeman@valleywater.org)

Subject: Pipeline Maintenance Program, Draft Program Environmental Impact Report,  
SCH No. 2023100671, Santa Clara County

Dear Mr. Coleman:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Program Environmental Impact Report (EIR) from Santa Clara Valley Water District (Valley Water) for the Pipeline Maintenance Program (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW previously submitted comments in response to the Notice of Preparation of the draft program EIR.

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 the Fish and Game Code. In an email from you on October 21, CDFW received an extension to the deadline to provide comments from October 28 to November 4.

## CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the 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 proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) 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 objective of the Pipeline Maintenance Program (PMP) Project (Project) is to update and modernize the existing PMP. Primary Project activities under the PMP include the maintenance of Valley Water's conveyance systems including pipelines and

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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related appurtenances for distributing raw, treated, and recycled water. Maintenance activities include inspection and maintenance of pipeline components, tunnels, manholes, meters, vaults, system instrumentation, backup generators, pump stations, storage tanks, surge tanks, and maintenance roads, and performing bank stabilization and vegetation management where needed. Project activities will be covered under an updated PMP manual, a successor to the 2007 PMP manual.

**Location:** The Project primarily encompasses Santa Clara County, as well as small portions of Merced and San Benito Counties.

**Timeframe:** The Project intends to have a minimum 15-year duration.

## 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. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that a program EIR is appropriate for the Project.

### I. Project Description and Related Impact Shortcoming

**COMMENT 1:** Usage of Gabion Baskets and Sacked Concrete (Section 2.6.3 Task Description, Page 2-26, and Section 3.3.1 Biological Resources, Environmental Setting)

**Issue:** Gabion baskets are not recommended for stream channel applications because experience has shown that gabions usually fail over time (California Department of Transportation [Caltrans], 2001; Thompson et al., 2016). The gabion wire, including galvanized and plastic-coated wire, may lose half their strength in 1-15 years (Caltrans, 2001) and may wear and break, resulting in complete failure in as little as 25 years (Thompson et al., 2016). Life expectancy of gabions is reduced when these structures are inundated by streams and other water resources, and further when debris such as wood or vegetation come in contact with the structure. Eroded or broken wires may pose a risk to fish and wildlife including catching gills of fish and other injuries. Sacked concrete is also not a recommended bank stabilization technique because it may fail over time with exposure to heavy flows or other weather events, collapsing into waterways, causing erosion and degrading water quality. Failing gabions and sacked concrete may result in uncontrolled bank failure and sediment deposition.

**Recommendation:** CDFW recommends Valley Water re-evaluate the use of gabion baskets and sacked concrete for bank stabilization and consider other less environmentally damaging design alternatives if rip rap or softscape is not possible. If gabions or sacked concrete must be used, CDFW recommends the following mitigation measures:

#### Mitigation Measure 1: Alternative Methods

Alternatives to gabions and sacked concrete that have a greater lifespan and less environmental impacts should be considered. Alternative methods include, in the order of preference, biotechnical, hybrid, and ungrouted riprap. If gabions or sacked concrete is used, Valley Water should work with CDFW to determine if a higher mitigation ratio is necessary to offset environmental impact.

#### Mitigation Measure 2: Monitoring of Bank Stabilization

If gabions or sacked concrete is used, monitoring should regularly occur to ensure that (1) there are no signs of weakness or failure including broken wires, eroded concrete, or other signs of weakness and (2) no injury or mortality of species are occurring. If there

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are signs that the bank stabilization method is failing, Valley Water shall make repairs immediately. If injury or mortality of species occur as a result of the methods, CDFW shall be contacted within 24 hours and mitigation efforts discussed.

**Mitigation Measure 3: Geotextile Use**

If gabions or sacked concrete are not used, but permanent hardscape such as rock rip rap is used, CDFW recommends that geotextile fabric be avoided, and gravel blankets be used instead where site constraints allow. If geotextile fabric is used, mitigation should be at a 3:1 ratio.

**II. Environmental Setting and Related Impact Shortcoming**

**COMMENT 2:** Impacts to Tule Elk (Section 3.3.4, Biological Resources, Impact Analysis)

**Issue:** Tule Elk (*Cervus canadensis nannodes*) are California's largest land mammal and an important wildlife resource whose population growth in recent decades has been of great interest to the public. Population growth since 1970 has been significant and California now supports approximately 5,700 Tule elk (CDFW 2018). The draft program EIR briefly mentions Tule elk in terms of habitat impact, however, further analysis and mitigation for this species is not mentioned since the species is not a CDFW Species of Special Concern nor a species that falls under the Valley Habitat Plan (VHP). The Project has the potential to impact this species through habitat loss, human disturbance, and mortality resulting from vehicle collisions.

**Recommendation:** To evaluate potential impacts to Tule elk, CDFW recommends conducting the following evaluation in the Project area, incorporating the following mitigation measure into the draft program EIR prepared for this Project, and that this measure be made a condition of approval for the Project:

**Mitigation Measure 4: Tule Elk Habitat**

The EIR should include surveys of Tule elk and their habitat that may be affected by Project activities. The loss of habitat should be conserved, and Valley Water should coordinate with CDFW to determine suitable mitigation.

**Mitigation Measure 5: Fencing**

Physical barriers such as fencing have the potential to impact tule elk. CDFW recommends not utilizing physical barriers that may impede tule elk access to water and foraging areas. If fencing must be used, Valley Water should first consider wildlife corridors and using wildlife friendly fencing such as using a lower height and/or using highly visible fencing.

**III. Mitigation Measure or Alternative and Related Impact Shortcoming**

**COMMENT 3:** Riparian Impact Mitigation (Section 3.3.4, Page 3.3-156 – 3.3-162)

**Issue:** The draft program EIR states that there may be significant effects to riparian vegetation from the Project. While most impacts will be mitigated through the payment of VHP fees, in-kind and out of kind mitigation may also be utilized. The draft program EIR states that the mitigation for permanent impacts to riparian vegetation through in-kind restoration, excluding sycamore woodland, is 1.5:1. However, the mitigation ratio does not account for what impacts are happening, such as if the impacts are to native or non-native riparian species, or if the impacts are occurring to species that take longer to restore, or are more sensitive to impact.

**Recommendation:** CDFW recommends that permanent impacts to riparian habitat be replaced in-kind when possible, and be assessed on a per-species basis, and mitigation

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follow species-specific needs. If oak trees are being impacted, a higher mitigation ratio is recommended due to their slow growth and diversity of ecological benefits. To evaluate and avoid potential Project impacts to riparian habitat, CDFW recommends incorporating the following mitigation measure, and that the measure be made a condition of approval for the Project:

**Mitigation Measure 6: Habitat Assessment and Mitigation**

Valley Water should conduct a habitat assessment and assess the composition of tree species in the riparian habitat that will be removed, and the size of those tree species.

Trees that will be removed due to Project activities should be replaced at the following ratios, and should be included in the EIR, with the exception of sycamore woodland:

- Non-native trees
  - Less than 15 inches diameter at breast height (DBH): 1:1
  - 15 inches or greater DBH: 2:1
- Native trees (not including oaks)
  - Less than 6 inches DBH: 1:1
  - 6-12 inches DBH: 3:1
  - 12 inches or greater DBH: 4:1
- Oaks
  - Less than 4 inches DBH: 1:1
  - 4-10 inches DBH: 4:1
  - 11-15 inches DBH: 5:1
  - 15 inches or greater DBH: 10:1

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

**COMMENT 4:** Cumulative Impacts from Other Projects in Program Area (Section 4.6, Cumulative Impact Analysis)

**Issue:** Although activities proposed under the Project may occur within sections of the entire Project area and vary in location year to year, the Project may have considerable cumulative impacts within a stream or watershed. The PMP has been implemented for 16 years and the proposed Project plans to implement repair and maintenance activities and other projects for a minimum of 15 years more. The draft program EIR addresses biological cumulative impacts through various local and regional plans (Page 4-5), however, the analysis of several of these plans do not include current and future larger-scale capital projects that may contribute to cumulative impacts, such as flood protection projects, dam retrofit projects, etc. which could further impact a variety of habitat types and species.

Additionally, as a programmatic EIR, impacts may occur in the same project locations multiple times leading to cumulative impacts. Implementing both small and large-scale construction, repair and maintenance projects will or may result in impacts such as noise, groundwork, sediment, spread of pathogens, and deleterious material entering the streams or other waterways, erosion, and other loss or modification of habitat that could significantly impact native species and their habitats. Cumulative impacts are also deemed less-than-significant with mitigation primarily due to projects having VHP mitigation coverage. However, mitigation for some capital projects may not be subject to VHP coverage, which is not discussed as a cumulative impact.

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**Recommendation:** The EIR should identify reasonable future projects within the Project area, 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, and mitigation may be through payment of VHP fees, 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 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 filled out and submitted online 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. (See Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the draft program EIR to assist Valley Water in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Anstett, Environmental Scientist, at (707) 815-6427 or [Alexandra.Anstett@wildlife.ca.gov](mailto:Alexandra.Anstett@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
*Erin Chappell*  
B77E9A6211EF486  
Erin Chappell  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023100671)

## United States Fish and Wildlife Service

Joseph Terry, [Joseph.Terry@fws.gov](mailto:Joseph.Terry@fws.gov)

## Regional Quality Control Board

Kim Sanders, [Kim.Sanders@waterboards.ca.gov](mailto:Kim.Sanders@waterboards.ca.gov)  
Susan Glendening, [Susan.Glendening@waterboards.ca.gov](mailto:Susan.Glendening@waterboards.ca.gov)

## San Luis Obispo Regional Water Quality Control Board

Phillip Hammer, [Phillip.Hammer@waterboards.ca.gov](mailto:Phillip.Hammer@waterboards.ca.gov)

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**United States Army Corps of Engineers**

Katerina Galactos, [Katerina.Galactos@usace.army.mil](mailto:Katerina.Galactos@usace.army.mil)

**Santa Clara Valley Habitat Agency**

Edmund Sullivan, [Edmund.Sullivan@scv-habitatagency.org](mailto:Edmund.Sullivan@scv-habitatagency.org)  
Gerry Haas, [Gerry.Haas@scv-habitatagency.org](mailto:Gerry.Haas@scv-habitatagency.org)

**National Marine Fisheries Service**

Darren Howe, [Darren.Howe@noaa.gov](mailto:Darren.Howe@noaa.gov)  
Joel Casagrande, [Joel.Casagrande@noaa.gov](mailto:Joel.Casagrande@noaa.gov)  
Wendy Bragg, [Wendy.Bragg@noaa.gov](mailto:Wendy.Bragg@noaa.gov)  
Corinna Hong, [Corinna.Hong@noaa.gov](mailto:Corinna.Hong@noaa.gov)

**California Department of Fish and Wildlife**

Jason Faridi, [Jason.Faridi@wildlife.ca.gov](mailto:Jason.Faridi@wildlife.ca.gov)  
Craig Weightman, [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov)

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