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August 26, 2024

Andrew Martin, Environmental Planner
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
CCFPPcomments@valleywater.org

Subject: Coyote Creek Flood Protection Project, Draft Environmental Impact Report,
SCH No. 2023110513, Santa Clara County

Dear Andrew Martin:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from Santa Clara Valley Water District (Valley Water) for the Coyote Creek Flood Protection Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the draft 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.

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 Project is to provide flood protection along several reaches of Coyote Creek, totaling nine miles. Primary Project activities include the construction of floodwalls, passive barriers, headwalls and wingwalls, berms, and flap gates. The Project intends to construct the flood infrastructure to allow for a 20-year rain

¹ 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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event and increased flows from the dewatering of Anderson Dam under the future Anderson Dam Seismic Retrofit Project.

Location: The Project runs along several reaches of Coyote Creek, starting at Reach 4 located at the intersection of the creek and Montague Expressway, 37°23'45" N, 121°54'54" W and continuing upstream to Reach 8 at the intersection of Tully Road, 37°18'37" N, 121°50'38" W, Santa Clara County, California.

Timeframe: The Project is expected to start in early 2025 and last for two years with up to three flood-control construction activities happening at once.

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 Project's avoidance of significant impacts on biological resources, CDFW concludes that an EIR is appropriate for the Project.

I. Project Description and Related Impact Shortcoming

Would the Project have a significant adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

COMMENT 1: Impacts to Vegetation (Section 3.4.4, Environmental Impacts and Mitigation Measures)

Issue #1: The Biological Resources Section on page 3.4-60 details 26 riparian trees to be removed and another 8 trees to be trimmed that may cause mortality of trees located at the temporary creek crossing. However, the draft EIR does not describe the number of trees, species, or other vegetation to be removed across the entire project footprint. The draft EIR also does not address how much, if any, vegetation will be replanted at any locations where tree removal is proposed and how long it would take for the impacts to reach pre-project conditions.

Several areas of floodwalls are being installed within the riparian corridor. The draft EIR does not assess how many trees are above the floodwalls, and if their roots will be impacted by the installation of floodwalls. Additional mortality or loss of vitality may occur due to the floodwalls cutting off root access to water from Coyote Creek. In addition, dead trees may increase fuel load for wildfires which have the potential to cause a further loss of habitat and increased stream erosion and sediment (Pettit & Neiman 2007).

Riparian trees and vegetation, and associated floodplains provide many essential benefits to stream and river fish habitat (Moyle 2002, CDFG 2007). Riparian forests provide thermal protection, shade, and large woody debris. Large woody debris stabilizes substrate, provides shelter and cover from predators, facilitates pool establishment and maintenance, maintains spawning bed integrity, and creates habitat for aquatic invertebrate prey. Riparian areas also provide critical fish habitat in the form of off-channel and back-water winter-rearing sites and floodwater refugia (CDFG 2007).

Furthermore, impacts to oak woodlands will occur under the Project. The importance of oak woodlands is further supported through the Oak Woodlands Conservation Act (Fish & G. Code §1360–1372). A temporal loss also exists for regaining the specific habitat that oak trees provide such as trunk and branch cavities, downed woody debris, and snags.

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Recommendation: CDFW recommends impacts to vegetation be addressed, including the total number of trees and shrubs being removed, the area of vegetation being removed, the species being removed, and the area of replanting and species to be replanted that is intended on-site. CDFW recommends that a figure be included showing the location of vegetation removal and locations of replanting. Any specific impacts related to vegetation loss that are being addressed under the Santa Clara Valley Habitat Plan (SCVHP) should also be stated. oaks are very slow growing trees, therefore, if any replanting of oaks occurs, they should be monitored for 10 years.

To evaluate and avoid potential Project impacts to floodwalls on tree mortality, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

Mitigation Measure #1: Tree Assessment

CDFW recommends an assessment for tree mortality occur to determine if floodwalls are causing negative impacts on trees above the floodwalls. Potential survey methods may include surveying trees for health and vigor at the impact sites, and upstream and downstream as a control. If additional mortality or stress seen due to drought-like impacts occur at the near and around floodwalls and does not occur along other areas of the riparian corridor, additional mitigation may be required since impacts would likely be due to the installation of floodwalls.

Mitigation Measure #2: Vegetation Replanting

Temporarily impacted areas within the riparian zone or other sensitive natural community should be restored and planted with native trees, shrubs, and grasses. A mitigation and monitoring plan should be developed and include success criteria to be met at the end of the monitoring period. If success criteria to be met, the mitigation plan should include adaptive management actions along with additional years of monitoring as well as additional mitigation for the temporal loss.

Mitigation Measure #3: Santa Clara Valley Habitat Plan Payment

The draft EIR should explain the mitigation being provided through the SCVHP including the payment of fees and any off-site restoration. Any applicable monitoring should be included.

II. Environmental Setting and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 2: Wildlife Impacts (Section 3.4.4, Environmental Impacts and Mitigation Measures)

Issue: Section 3.11 Table 3.11.14 describes a maximum noise level at the receptors to be up to 112 decibels (dB), with a maximum change in noise level being over 61 dB during construction activities. Noise exceeding 45 dB for birds, 52 dB for mammals, and 60 dB for amphibians may be enough to cause physiological stress, behavioral changes, and reduced fitness (Francis & Barber 2013, Shannon et al. 2015), with similar impacts occurring when noise exceeds 3 dBA above ambient noise levels (Barber et. al 2009). The draft EIR did not evaluate specific impacts of noise on wildlife species including, but not limited to, nesting birds, roosting bats, and burrowing mammals.

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To evaluate and avoid potential Project noise impacts CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

Mitigation Measure #4: Noise assessment

CDFW recommends increasing buffers between known wildlife occurrences and occupancy areas to decrease impacts on noise on wildlife, including special-status species when applicable, and based on species-specific impacts and needs. Qualified biologists/biological monitors should survey for any flushing of birds, abandonment or collapse of burrows, or behavioral changes of wildlife when Project activities exceed noise levels of 70 dB, or 3 dB above the recorded ambient noise.

Issue: Biological Resources section 3.4.4 and Cumulative Impacts section 4.4.2 state that no impacts will occur to habitat for northwestern pond turtle (*Actinemys marmorata*), and higher quality habitat may be provided in some areas. The Project does not address how higher quality habitat is being provided and where that habitat is being provided.

Recommendation: CDFW recommends impacts to pond turtle and pond turtle habitat are clarified. Habitat improvements should be addressed if they are being applied. Habitat improvements may include putting in basking sites and enhancing in-water and upland refugia (Hays et al. 1999).

Issue: The floodwalls and passive barriers have the potential to cause species impacts that may have not been fully addressed under the draft EIR. Because passive barriers are built into the ground, they have the potential to trap fish or other aquatic species when flood waters recede after barrier deployment. Additionally, there may be a potential for burrowing animals or birds to use the passive barriers as habitat or nesting sites when not deployed. During flood events, the habitat and nests have the potential to flood and cause mortality.

Page 3.4-63 of the draft EIR says that additional flow and scour from the installation of floodwalls and passive barriers are not causing a significant impact to species. However, CDFW still has concerns on species impacts including the additional loss of habitat due to increased velocities such as loss of large woody debris, pool habitat, back water habitat. Additional velocities could also scour eggs from fish and amphibians during high flow periods.

Recommendation: CDFW recommends that the full scope of impacts from the installation of floodwalls and passive barriers be included. CDFW also recommends the draft EIR address potential impacts that may occur to wildlife during flood events and deployment of the passive barriers. This may include hydrology and hydraulics analysis of pre- and post-construction flows and potential sediment scour to understand impact more fully. To evaluate and avoid potential impacts, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

Mitigation Measure #5: Submittal of Designs and Consultation with Conservation Engineering Branch

Early and continued coordination with CDFW staff in the Habitat Conservation Program and Conservation Engineering Branch is recommended to provide review and analysis of any proposed structures or Project elements with the potential to impact fish and wildlife resources. CDFW should be provided with engineered drawings and design specification planning sheets during the initial design process and prior to design selection. Reinitiation of design consultation should be at 30 percent design at minimum and through the permitting process for review and comment.

Mitigation Measure #6: Submittal of a Mitigation and Monitoring Plan

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CDFW recommends developing a mitigation and monitoring plan for the proposed flood control infrastructure to assess post-construction impacts to mortality and movement of aquatic and terrestrial special-status species, as affected by flood walls and passive barriers during operations across a range of flows. The plan should include at a minimum, that the barriers should be regularly inspected for trapped wildlife, and that immediately following a storm event and flood barrier deployment, flood barriers shall be monitored for trapped fish or aquatic species.

Issue: Page 3.4-68 of the draft EIR says that habitat loss will not be a significant impact to nesting birds because the total acreage of habitat loss would be insignificant compared to the rest of the habitat available. However, CDFW cannot fully determine if the impact is significant since details regarding the habitat loss, including species of vegetation, size of vegetation, and location of removal, is not stated. In addition to nesting birds, roosting bats, other wildlife species including such as the San Francisco dusky footed woodrat (*Neotoma fuscipes annectens*), and monarch butterfly (*Danaus Plexippus*), also may rely on vegetated habitat for nesting, foraging, roosting, and use as refugia.

Recommendation: The draft EIR should include a full assessment of vegetation impacts following Mitigation Measures 1, 2, and 6. A more detailed assessment of the significance of habitat loss should then be included for any species that may use the removed vegetation for nesting, foraging, roosting, and use of refugia.

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

Does the Project have impacts that are individually limited, but cumulatively considerable? "Cumulatively considerable" means that incremental effects of the Project are considerable when viewed in connection with effects of past projects, effects of other current projects, and effects of probable future projects?

COMMENT 3: Cumulative Impacts to Wildlife Habitat (Section 4.4.2 Cumulative Impacts)

Issue: The draft EIR describes that the cumulative impacts to nesting and roosting habitat is comparatively small, however, the total area loss for vegetation is not stated. Therefore, it is difficult to determine if there are significant cumulative impacts to species habitat. Additionally, the cumulative impacts do not address the amount of habitat loss across all projects, particularly between the Coyote Creek Flood Protection Project and the Coyote Creek Flood Management Measures since those projects are adjacent to one another. Additional cumulative impacts not assessed include temporary lighting between the two projects and if there would be continuous disturbance to nocturnal wildlife, impacts of construction noise across the two projects, loss of habitat across the two projects, and overall hydrological changes and consequent species impacts to Coyote Creek between the two projects. To evaluate and avoid potential impacts from cumulative impacts, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

Mitigation Measure #7: Addition of Reasonably Foreseeable Probably Future Projects

The draft EIR should address biological impacts across past, present, and future projects in the Coyote Creek watershed in more detail. The draft EIR should disclose cumulative impacts, 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. The draft EIR should evaluate proposed mitigation measures

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and CDFW recommendations in light of these additional projects that will exacerbate considerable cumulative impacts from the Project. This should include impacts of noise on biological resources, continuous temporary light, construction, loss of riparian habitat, changes in hydrology, and operations on biological resources.

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 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.

Sincerely,

Signed by:

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Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse (SCH No. 2023110513)

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