



San Francisco Bay Regional Water Quality Control Board

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August 26, 2024

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn: Mr. Andrew Martin
Email: CCFPPComments@valleywater.org

Subject: Comments on Draft Environmental Impact Report for Coyote Creek Flood Protection Project, Santa Clara County (State Clearinghouse (SCH) No. 2023110513)

Dear Mr. Martin:

Thank you for the opportunity to comment on the draft environmental impact report (EIR) for the Coyote Creek Flood Protection Project (Project) that Valley Water is preparing pursuant to the California Environmental Quality Act (CEQA) (SCH No. 2023110513). The Project would construct a series of flood risk reduction improvements to reduce the risk of flooding in urban areas along nine miles of Coyote Creek in the City of San José (City). We offer the following comments on the draft EIR to support development of the project's design, evaluation of its potential environmental impacts, and the Water Board's future review of applications to authorize project construction.

Impacts and Mitigation – Additional Information Needed

We support Valley Water's approach to constructing the Project's flood control measures primarily in uplands and along the Creek's top-of-banks, with traditional and passive floodwalls, berms, and levees. Flood protection would be achieved without having to widen the Creek to increase flow capacity, thereby avoiding and minimizing discharges of excavation and fill materials in the Creek.

The EIR should be revised, however, to clearly explain the unavoidable temporary and permanent impacts to waters of the State. This is necessary for Valley Water to develop a mitigation and monitoring plan (MMP) to meet the Water Board's requirements for California's "no net loss" policy, which is to ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values. Pursuant to the *Procedures for the Discharges of Dredged or Fill Material to Waters of the State* (Procedures) issued by the State Water Resources Control Board (State Board), and the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), section 4.23, the project proponent must avoid and minimize permanent impacts to waters of the State to the maximum extent practicable, and provide appropriate compensatory mitigation of unavoidable impacts to achieve no net loss. To address this, a detailed characterization of Project impacts is necessary to be able to identify appropriate types and amounts of compensatory mitigation.

ALEXIS STRAUSS HACKER, CHAIR | EILEEN M. WHITE, EXECUTIVE OFFICER

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For example: provide the lengths of impacts from riparian vegetation removal in addition to the areal extents for both temporary and permanent impacts; identify the vegetation species, sizes, and ecological functions they provide such as habitat for nesting, foraging, and refugia, and other functions like shading and bank stability; provide the types, volumes, lengths, and areas of discharges of excavation or fill material for construction of flood management measures along the tops of banks and between the Creek's banks. Similar details are also needed for temporary excavation or fill discharges including (but not limited to): the temporary Creek crossing; fill that may occur in the seasonal wetland in one of the staging areas and for coffer dams and discharge dissipation structures for Creek dewatering systems. In terms of environmental impacts pursuant to CEQA, some of this information was provided at concept level in the draft EIR; for Certification application, however, much more detail will be required, as noted here.

Additional details are also needed for compensatory mitigation and monitoring of the Project. The EIR indicates compensatory mitigation would be achieved by onsite revegetation in some areas, and by payment of Santa Clara Valley Habitat Plan (VHP) fees. The Water Board has not approved the VHP, so compensatory mitigation by paying VHP fees would not be acceptable for meeting the Water Board's requirements. We have, however, approved the VHP In-Lieu Fee Program (ILFP) enabling instrument, which means that the purchase of credits from the ILFP, if available, would potentially be acceptable. The EIR should clarify this important distinction. We recommend Valley Water discuss the use of VHP ILFP credits with the Interagency Review Team that oversees ILFP projects as soon as possible so that the EIR can be revised to cover the details for compensatory mitigation projects and activities. We also recommend Valley Water work through the ILFP MMP template (ILFP enabling instrument, Attachment G) to facilitate accurate characterization of the Project's impacts and to identify compensatory mitigation needs and types of ILFP credits that would be needed. Finally, the MMP should also include geomorphic monitoring to evaluate whether the Creek is stable with the new flood control elements.

Aquatic Resources Delineation (Draft EIR, Appendix D-Biological Resources Technical Appendix) – Additional Information Needed

The delineation was conducted in October 2023 with a follow-up visit in February 2024. Please clarify if the dry season surveys of October 2023 resulted in under-reporting of the presence of waters of the State. The Project's impacts to waters of the State and methods to avoid and minimize impacts may need to be revised in the EIR, accordingly. For a complete Certification application, this would also need to be addressed for consistency with the Procedures.

Hydrology and Hydraulics

Hydrology and Hydraulics Technical Appendix (draft EIR, Appendix H) indicate Project conditions were evaluated with the 100-year flow return frequency under various scenarios, but the Project is designed to protect against a 20-year flow. Please clarify if the Project would have risk of erosion or scour from the Project's floodwalls or other elements in the Creek or top of bank, and whether additional evaluations based on a 20-year flow event should be addressed.

Post-construction Stormwater Management Plan

The EIR indicates new impervious surfaces would "...be mainly from the construction of passive barriers within the ground (approximately 22,600 square feet)" (draft EIR, pg. 3.9-33, and others). Impervious surfaces are known to impact waters of the State by increasing erosion and sedimentation through hydromodification (i.e., changes in runoff volume and duration) and by collecting and concentrating pollutants in runoff. The EIR should describe measures that will be implemented to avoid and minimize impacts to water quality from runoff. For impervious surfaces associated with the passive barriers, runoff can be directed to adjacent vegetated areas, to non-erodible permeable areas, or towards the outboard side of levees. If runoff is directed to adjacent vegetated areas, a 2:1 or lesser

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ratio of impervious to pervious surface is preferred. Management of runoff from project impervious surfaces should be consistent with Provision C.3 of the Municipal Regional NPDES Stormwater Permit (Order No. R2-2022-0018) and associated technical guidance. A post-construction stormwater management plan for this Project would need to also address new and replacement impervious surfaces, specifically for new maintenance access roads, in the Coyote Creek Flood Management Measures Project (CCFMMP) currently being constructed under the emergency authorization by State Board for the Anderson Federal Energy Regulatory Commission Order Compliance Project. State Board Deputy Director's conditional approval of the CCFMMP deferred a requirement for a post-construction stormwater management plan for the CCFMMP to this Project due to the urgent need for CCFMMP to begin construction (State Board letter dated November 10, 2022).

Closing

If you have any questions about this matter, please contact Susan Glendening at (510) 622-2462 or susan.glendening@waterboards.ca.gov. We look forward to continuing to work with you on this project.

Sincerely,

Elizabeth Morrison
Senior Environmental Scientist

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