California Water Boards

Gavin Newsom
Governor

Yana Garcia
Secretary for
Environmental Protection

San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy will follow

February 9, 2024

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Attn: Kelly White (CanalMaintenanceProgram@valleywater.org)

Subject: Comments on Notice of Preparation for Canal Maintenance Program, Santa Clara County (SCH No. 2024010139)

Dear Ms. White:

The San Francisco Bay Regional Water Quality Control Board (Water Board) appreciates the opportunity to comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Canal Maintenance Program (CMP), prepared by the Santa Clara Valley Water District (Valley Water) pursuant to the California Environmental Quality (CEQA) (State Clearinghouse No. 2024010139). The CMP would implement preventative, routine, and corrective maintenance in seven canals in Santa Clara County. The canals run through the cities of Campbell, Los Gatos, San Jose, and Morgan Hill, and in unincorporated Santa Clara County. The purpose of this letter is to provide feedback on the Project's potential environmental effects and potential alternatives to avoid and minimize these impacts to aquatic resources.

Our comments are also intended to facilitate the process for future authorization of the CMP pursuant to the Clean Water Act, section 401; the Porter-Cologne Act and California Water Code, section 13000 et seq.; and the San Francisco Bay Basin Water Quality Control Plan (Basin Plan), which regulate discharges of dredge or fill materials to waters of the State. To formulate our comments, we used information from the NOP, the public scoping meeting of January 25, 2024, and emails and discussions with Valley Water staff and other agency staff.

Comment 1. Project Description and Characterization of Waters of the State

The EIR should describe the canals with sufficient detail to identify and characterize the wetlands and/or other waters of the United States (U.S.) and waters of the State. Valley Water should perform a jurisdictional aquatic resources delineation to be able to accurately describe the CMP's environmental impacts to aquatic resources (including both federal and state wetlands and other waters) in the EIR.

In responding to the standard CEQA checklist items, Valley Water should address the following issues in the EIR for the CMP's description and to adequately characterize the potential alternatives, impacts, and mitigation:

Beneficial uses of wetlands and other waters in the Project
The EIR should clearly show in maps the locations of the canals; describe the water sources, alignments, and discharge points of each canal; and include the beneficial uses of the canals pursuant to the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan). Please note that the beneficial uses designated in the Basin Plan for an individual water body also apply to the tributaries of that water through the "tributary rule." For example, the Coyote Canal and Coyote South Extension receive flows from tributaries to Coyote Creek, so the tributaries and canals likely have the same beneficial uses as Coyote Creek.

Hydrology
The CMP goals include maintenance of existing flow capacity and velocity in each canal. The EIR should describe the existing flow capacities, velocities, and flow rates in each canal. If these criteria vary from upstream to downstream please provide such details in the EIR.

Biological Resources
Fish Screens. The EIR should identify and describe the intake points and discharge points in each canal and describe the fish screens in the canals and how they affect the operations of the canals.

Native and non-native flora and fauna. The EIR should address impacts to California native flora and fauna even if they are not specifically listed as threatened or endangered species pursuant to the federal Endangered Species Act or California Endangered Species Act. These biota contribute to the ecological functions of waters of the State. Impacts to non-native species may also adversely impact the ecosystem of a canal such as an impact of removing vegetation being used by nesting birds or providing shelter for various biota. We refer Valley Water to the details of your Stream Maintenance Program (SMP) which thoroughly addresses variations in potential impacts to jurisdictional wetlands and other waters, and request Valley Water include and evaluate such details in the EIR. (See also Comment 5 regarding the SMP and CMP similarities.)

Land Ownership and Canal Functions and Services
In addition to the beneficial uses, please clarify the land uses and canal functions and services including water operations ("operable canals") and/or flood risk reduction ("inoperable canals"). The EIR should distinguish the areas and canal reaches Valley Water owns in fee title and those for which Valley Water has easements and explain the implications of ownership for operations and maintenance of the canals. For example, Valley Water staff stated during the public meeting that their preference would be to abandon some of the canals (e.g., the Coyote Alamitos Canal) but Valley Water does not have the land rights to change the use of the land underlying the canals. Does this mean that Valley Water is obligated to manage the canals specifically for flood control in perpetuity due to the increased urban development downgradient of the canals? We are also concerned that Valley Water is proposing to repurpose some of the canals for flood risk reduction even though a canal used for water operations could protect or enhance

beneficial uses of a water body such as alleviating instream percolation in Coyote Creek (at least partially such as temporally modifying instream percolation). Please address this concern in the EIR.

Comment 2. Avoidance, Minimization, and Compensation of Impacts and Alternatives

The policy of the State with respect to the environmental impacts to aquatic resources is to require – in ranked order – first, avoidance, and second, where impacts are unavoidable, to minimize such impacts and last, to compensate for the impacts that cannot be either avoided or fully minimized. This means that no discharge of fill or excavation materials shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse impacts on the aquatic ecosystem. These requirements are pursuant to the provisions of the CWA and the Basin Plan, section 4.23.4, which incorporates by reference U.S. Environmental Protection Agency's CWA 404(b)(1) Guideline (Guidelines), and the State Water Resources Control Board's *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (Procedures) (please refer also to the Staff Report for the Procedures; these documents are available online at https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html).

With these requirements, before issuing water quality certification for the CMP we need to be able to find that impacts will be avoided and minimized to the maximum extent practicable. As such, we recommend Valley Water evaluate in the EIR a range of potential alternatives to identify the circumstances under which proposed dredge or fill discharges appropriately avoid, minimize, or compensate for impacts to waters of the State.

For example, in Valley Water's Stream Maintenance Program, which has similar activities and impacts as the CMP would have, best management practices (BMPs) that avoid and minimize impacts include work windows to avoid impacts to species of concern; avoiding herbicide use when it could wash into waters; pre-construction surveys; and many others. The SMP also includes "maintenance guidelines" on a reach-by-reach basis for identifying the maximum thresholds of site conditions before performing interventions that could cause temporary or permanent impacts to a wetland or other water. We recommend the CMP incorporate maintenance guidelines for each canal. (We address the SMP and its similarities to the CMP in Comment 5.)

The EIR should also include BMPs to prioritize soil bioengineering methods over hardscape for bank stabilization. Biotechnical engineering methods include substrate and vegetation that contribute to ecological functions such as habitat for flora and fauna which provide food, shelter, and nutrient cycling. The NOP indicates that upland stabilization may be part of the CMP to prevent erosion of hill slope material into the canals. We request Valley Water incorporate soil bioengineering for erosion in uplands in the CMP and evaluate this element in the EIR.

<u>Compensatory Mitigation—Santa Clara Valley Habitat Plan and Others</u>

The NOP lacks information on the approaches for compensatory mitigation of unavoidable impacts; the EIR should include details to address this gap. In the public meeting it was noted that a small portion of the CMP (about 3 percent) has incidental take coverage via the Santa Clara Valley Habitat Plan (VHP) for impacts to certain species. The VHP will be

amended in the near future to expand spatial coverage and take of additional species. Please clarify if it is Valley Water's intent for the VHP to mitigate for the CMP impacts.

Also, please note that the Water Board has not approved the VHP, although we recently adopted the VHP In-Lieu Fee Program enabling instrument which will allow for Valley Water to use ILFP credits to mitigate for a project's impacts. We are open to considering mitigation through the ILFP provided the proposed ILFP credits provide appropriate mitigation of the impact for which the credits are designated, or other projects outside of the VHP on a case-by-case basis. We recommend the EIR include compensatory mitigation concept plans that would be acceptable to the Water Board under the ILFP or other approaches.

Comment 3. Clarify the Functions and Services of the Canals

The NOP states that the Coyote Canal, Coyote Extension North, Coyote Extension South, and Coyote Alamitos Canal are "inoperable" because they are no longer used to convey raw water, but Valley Water proposes to maintain them for flood risk reduction services under the CMP. These canals consist of about 21.1 miles of the CMP, or about 80 percent of the CMP canal lengths. Please clarify whether repurposing a water canal for flood risk reduction instead of using it for raw water transfer should be subject to CEQA review. For a canal no longer needed for raw water transfer, the EIR should evaluate plans to decommission the canal and restore the land on the canal's alignment, or if full restoration would not be feasible, develop plans for flood risk reduction through nature-based and biotechnical engineering methods.

The "operable" canals, which are used for raw water transfers (Upper Page Ditch and Kirk Ditch) make up 2.35 miles in the CMP. Vasona Canal is also an "operable" canal (2.5 miles long) but is a "standby" canal. Please describe in the EIR all the functions and services of each canal in the inoperable, operable, and standby categories.

Comment 4. Municipal Regional Stormwater Permit

The Project proposes potential improvements to access roads, which could result in newly created or replaced impervious surfaces (including gravels roads and/or trails). 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 trails, 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 maximum 2:1 ratio of impervious area to the receiving pervious area (or a vegetated area that is at least half the width of the trail) 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.

Comment 5. Project Goal to Streamline Authorization for CMP Activities

Valley Water seeks to streamline the permitting of maintenance activities for canal maintenance under programmatic permits from agencies (see NOP, Project Objectives, page 3). The CMP would have maintenance activities that are similar or the same as those

of Valley Water's Stream Maintenance Program, including vegetation management; sediment removal; bank repairs; repairs to canal lining and walls; culvert repair, replacement, and installation; access road maintenance; management of animal conflicts; and minor maintenance. ("permit"). Our preference would be to incorporate a new module in the SMP to cover the CMP so that the CMP could be covered under the same permit as the SMP. This would support one of the CMP objectives to streamline approvals for canal maintenance and would be a more efficient way for Water Board staff to review and approve seasonal work activities.

Closing

We appreciate Valley Water proactively seeking a programmatic approach for canal maintenance activities. We look forward to working with you as you develop the CMP through the CEQA review process and subsequent application for water quality certification. If you have any questions, please contact Susan Glendening by email at susan.glendening@waterboards.ca.gov or phone at (510) 622-2462.

Sincerely,

E. Morrison

Digitally signed by Elizabeth Morrison
Date: 2024.02.09 18:19:15 -08'00'

Water Boards

Elizabeth Morrison
Senior Environmental Scientist
Watershed Management Division

Cc: State Clearinghouse: State.Clearinghouse@opr.ca.gov
Valley Water:
Ryan Heacock, RHeacock@valleywater.org
John Bourgeois, JBourgeois@valleywater.org
CDFW:
Mayra Molina, mayra.molina@Wildlife.ca.gov
Brenda Blinn, Brenda.blinn@Wildlife.ca.gov
Corps, SF Regulatory:
Katerine Galacatos, Katerina.Galacatos@usace.army.mil
Sarah Firestone, Sarah.M.Firestone@usace.army.mil
NMFS:
Page Vick, page.vick@NOAA.gov
Daren Howe, Darren.howe@NOAA.gov
Ali Weber-Stover, Alison.weber-stover@NOAA.gov
USFWS:
Joseph Terry, Joseph_Terry@fws.gov
Vincent Griego, Vincent_Griego@fws.gov
Santa Clara Valley Habitat Agency:
Ed Sullivan, edmund.sullivan@scv-habitatagency.org
Gerry Haas, gerry.haas@scv-habitatagency.org