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February 8, 2024

Governor's Office of Planning & Research

February 09 2024

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## STATE CLEARINGHOUSE

Subject: Canal Maintenance Program, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2024010139, Santa Clara County

Dear Kelly White:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) from the Santa Clara Valley Water District (Valley Water) for the Canal Maintenance Program (Project) pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; hereafter CEQA; Cal. Code Regs., § 15000 et seq.; hereafter CEQA Guidelines).

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 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 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

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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:** Active canals in Santa Clara County are used to distribute raw water. Though several canals in Santa Clara County are inactive, all canals collect and convey incidental stormwater runoff and provide incidental flood protection to nearby developments. The purpose of the proposed Project is to address preventative, routine, and corrective maintenance for several operable and inoperable canals. The Project intends to do this through vegetation management; sediment removal; bank stabilization; repairs to canal linings and walls; culvert repairs, replacement and installation; access road maintenance; management of animal conflicts; and other minor maintenance. Project activities aim to preserve the structural and functional integrity of canals and facilities, reduce costs of canal failure, facilitate access and timely completion of inspections and maintenance, protect public health and safety, and streamline environmental approvals for maintenance so that maintenance can be coordinated and conducted in a manner that minimizes impacts to the environment.

**Location:** The Project area is located within the cities of Campbell, Los Gatos, San Jose and Morgan Hill, and unincorporated Santa Clara County, and comprises seven canals: Coyote Canal, an inactive 7.2-mile canal from the historic point of diversion at Coyote Creek near the Coyote Visitor Center to Coyote Creek Parkway; Coyote Extension South, an inactive 1.2-mile canal from Coyote Canal in the south to Metcalf Road; Coyote Extension North, an inactive 2.1-mile canal from Piercy Road and Hellyer Avenue to the Evergreen Pump Station on Hellyer Avenue; Coyote Alamitos Canal, an inactive 10.6-mile shotcrete canal from the Coyote Extension South canal to Guadalupe Creek upstream of its confluence with Alamitos Creek; Vasona Canal, a standby 2.5-mile canal from Vasona Dam to San Tomas Aquino Creek; Kirk Ditch, an active 1.6-mile canal conveying Los Gatos Creek water and imported Central Pipeline water to the Oka and McGlincy percolation ponds; and Upper Page Ditch, an active 0.75-mile concrete canal that conveys water from Los Gatos Creek and imported Central Pipeline water to the Campden and Page percolation ponds.

## **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. Based

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on the potential for the Project to have a significant impact on biological resources, CDFW concludes that a draft EIR is appropriate for the Project.

## **I. Project Description**

**COMMENT #1:** The CEQA Guidelines (§§15124 and 15378) require that the draft EIR incorporate a full Project description that contains sufficient information to evaluate and review the Project's environmental impact.

**Issue:** Without a clear and concise description of the Project and potential foreseeable phases of the Project, it is challenging for CDFW to provide sufficient review of the NOP, assess all potential impacts of the Project, and provide adequate mitigation measures to offset the impacts. Temporary or permanent impacts from Project staging and maintenance of canals and associated infrastructure may cause increased turbidity, increased contaminants, changes in freshwater flow, disturbance or mortality of terrestrial and semi-aquatic species, loss of aquatic and terrestrial habitat, and disturbance to nesting birds and roosting bats.

**Recommendation #1:** The draft EIR should include a detailed description of each canal including the canal lining, conveyance points, structures intended for maintenance, and habitat types within the canal, riparian zone and surrounding areas. In addition, the draft EIR should include a detailed description of each type of Project activity, including approximate number of projects per year, construction schedules, equipment, crew sizes, and operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, construction or maintenance activities in canals and other features, in order for CDFW to evaluate and assess impacts that may occur from Project activities.

**Recommendation #2:** Portions of the Project are currently covered activities under the Santa Clara Valley Habitat Conservation Plan and Natural Community Conservation Plan (Habitat Plan), implemented by the Santa Clara Valley Habitat Agency (Habitat Agency). The Habitat Plan is currently undergoing a major amendment, expected to be finalized by 2025, to expand its coverage area as well as add covered wildlife species. As a co-Permittee of the Habitat Plan, Valley Water should clarify in the draft EIR any additional geographic and wildlife species coverage of the Project under the future Habitat Plan amendment, including any expected additional canals or segments and associated activities to be covered under the Habitat Plan. The draft EIR should also describe all impacts to land cover types under the Habitat Plan and Habitat Plan conditions to be followed or additional conditions needing to be developed to protect biological resources. For portions of the Project that are not expected to be covered under the Habitat Plan or amendment, the draft EIR should describe how impacts to biological resources resulting from Project activities will be avoided, minimized and/or

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mitigated. Potential compensatory mitigation options should be discussed in consultation with the Habitat Agency and CDFW.

**Recommendation #3:** The NOP states that several canals have not been in use since the 1980s (Coyote Canal, Coyote Extension South, Coyote Extension North and Coyote Alamosa Canal) or last operated in 2014 (Vasona Canal). Although the NOP states that all canals collect and convey stormwater runoff and provide flood protection, the draft EIR should evaluate the feasibility of implementing some level of decommissioning of inoperable canals and restoring canals to a more natural state. Ecological restoration efforts could result in the maintenance of hydrologic conveyance while providing important habitat for a variety of fish and wildlife species. CDFW recommends consultation with our scientific and engineering staff on developing these restoration opportunities and bioengineering designs.

## II. Environmental Setting

**COMMENT #2:** The Project location covers a large geographic area within Santa Clara County, where various special-status species, nesting birds, and rare plants may occur.

**Issue:** Special-status species, nesting birds, and rare plants may occur within the Project area and without appropriate mitigation measures, the Project could potentially have a significant impact on these species. Special-status species that may be present within the Project area, include, but is not limited to, those listed below:

- Northwestern pond turtle (*Actinemys marmorata*) – State Species of Special Concern (SSC) and Federally Threatened (FT)
- California red-legged frog (*Rana draytonii*) – FT and SSC
- Foothill yellow-legged frog Central Coast Distinct Population Segment (*Rana boylei*) – State Endangered (SE) and Federally Endangered (FE)
- California tiger salamander (*Ambystoma californiense*) – State Threatened (ST) and FT
- Santa Cruz black salamander (*Aneides niger*) – SSC
- California giant salamander (*Dicamptodon ensatus*) – SCC
- Pallid bat (*Antrozous pallidus*) – SCC
- American badger (*Taxidea taxus*) – SCC
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) – SSC

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- Yellow rail (*Coturnicops noveboracensis*) – SSC
- Yellow-breasted chat (*Icteria virens*) – SSC
- Tricolored blackbird (*Agelaius tricolor*) – ST
- Western burrowing owl (*Athene cunicularia*) – SSC
- Crotch's bumble bee (*Bombus crotchii*) – State Candidate as Endangered
- Bay checkerspot butterfly (*Euphydryas editha bayensis*) – FE
- Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*) - California Rare Plant Rank (CRPR) 1B.2
- Robust spineflower (*Chorizanthe robusta* var. *robusta*) – CRPR 1B.1 and FE
- Arcuate bush-mallow (*Malacothamnus arcuatus*) – CRPR 1B.2
- Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*) – FE
- Smooth lessingia (*Lessingia micradenia* var. *glabrata*) – CRPR 1B.2
- San Francisco collinsia (*Collinsia multicolor*) – CRPR 1B.2
- Hall's bush mallow (*Malacothamnus hallii*) – CRPR 1B.2
- Fragrant fritillary (*Fritillaria liliacea*) – CRPR 1B.2
- Loma Preita hoita (*Hoita strobilina*) – CRPR 1B.1
- Most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*) – CRPR 1B.2
- Metcalf canyon jewel-flower (*Streptanthus albidus* ssp. *albidus*) – FE
- Saline clover (*Trifolium hydrophilum*) – CRPR 1B.2
- Mt. Hamilton thistle (*Cirsium fontinales* var. *campylon*) – CRPR 1B.2
- Woodland woollythreads (*Monolopia gracilens*) – CRPR 1B.2
- Dwarf soaproot (*Chlorogalum pomeridianum* var. *minus*) – CRPR 1B.2
- Other nesting birds and roosting bats

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The proposed Project includes activities for canal maintenance such as vegetation management, repairs and maintenance to banks, roads, and culverts, sediment removal, and animal conflict management which may cause negative environmental impacts to aquatic, semiaquatic, and terrestrial species and their habitats. Without appropriate avoidance measures for special-status species, potentially significant impacts associated with Project activities may include reduced reproductive success; reduced health and vigor; nest abandonment; loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young); burrow/den collapse; crushing as a result of burrow collapse; inadvertent entrapment or entrainment; impingement; strandings; habitat loss; introduction of non-native species; changes in freshwater flow; turbidity; introduction of debris and/or deleterious materials into stream habitats; and direct mortality. Unauthorized take of species listed as threatened, endangered or candidate species for listing pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

### **Recommended Potentially Feasible Mitigation Measures**

CDFW recommends that the draft EIR include the following mitigation measures to reduce impacts to less-than-significant levels:

#### **Mitigation Measure #1: Habitat Assessment**

A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for special-status species. For species in which habitat corridors are crucial, the habitat assessment should include review of habitat available within the specific Project area and adjacent habitats. If the Project may result in fragmentation of habitat, Project design(s) should be altered to prevent this fragmentation. If fragmentation cannot be avoided, structures should be designed to allow wildlife movement.

#### **Mitigation Measure #2: Special-Status Plant Surveys**

The Project area should be surveyed for special-status plant species, including those with a CRPR (<http://www.cnps.org/cnps/rareplants/inventory/>), by a qualified botanist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements, available at: <https://wildlife.ca.gov/Conservation/Plants>.

#### **Mitigation Measure #3: Special-Status Wildlife Species Surveys and Bird Nest Surveys**

The Project area should be surveyed for special-status wildlife species by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to

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maximize detectability. Survey and monitoring protocols and guidelines are available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols>.

If Project activities are to take place during the avian nesting season, CDFW recommends protocol-level surveys following established methodologies (e.g., point counts, area searches, etc.) be conducted within the Project area by a qualified biologist throughout the nesting season. These surveys should cover a sufficient area where suitable nesting habitat is present as well as an appropriate buffer surrounding nesting habitat. Surveys should be conducted prior to the start of any work that could result in loss of habitat or disturbance to nesting birds. As part of protocol-level surveys, pre-construction surveys should include a minimum of two surveys for active nests with the first survey conducted no more than seven days prior to the start of Project activities, and the second survey conducted 48 hours prior to the start of Project activities.

#### **Mitigation Measure #4: Impact Analysis**

The draft EIR should include complete descriptions of permanent and temporary impacts to both aquatic and terrestrial species and their habitats associated with staging, construction in and around stream and riparian habitat, ground disturbance, noise, lighting and reflection, air pollution, traffic, and/or human presence. The draft EIR should also include appropriate and effective mitigation measures to completely avoid impacts to special-status species and other native plant and wildlife species and natural communities. If complete avoidance is not feasible, the draft EIR should include minimization measures, and compensatory mitigation to offset all potential impacts.

#### **Mitigation Measure #5: Special-Status Plant Avoidance**

Special-status plant species should be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.

#### **Mitigation Measure #6: Special-Status Wildlife Species and Nesting Bird Avoidance**

If special-status wildlife species such as small mammals, amphibians or reptiles are found during Project activities, work should stop, and the individual should be allowed to leave the site through its own volition. If SSC wildlife species or active bird nests are found within or adjacent to the Project area, the qualified biologist should establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all Project-related activities. For nesting birds, the qualified biologist should increase the buffer if the birds are showing signs of unusual or distressed behavior such as defensive flights/vocalizations, standing up from a brooding position, or flying away from the nest. Buffers should be maintained until the eggs have hatched and young have fledged and are completely independent of the nest site.

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**Mitigation Measure #7: State-Listed Species Take Authorization**

If State-listed species that are not covered species under the Habitat Plan or outside the Habitat Plan area are identified during surveys and full avoidance of take is not feasible, Valley Water should consult with CDFW and obtain take authorization through issuance of an Incidental Take Permit (ITP).

**Mitigation Measure #8: Federally Listed Species Consultation**

CDFW recommends consulting with the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS) if the Project will impact federally listed species. Consultation with the USFWS or NMFS in order to comply with the federal Endangered Species Act (ESA) is advised well in advance of Project implementation.

**COMMENT #3:** The Project may affect aquatic features and associated riparian habitat or other sensitive natural communities.

**Issue:** The Project area is likely to contain water features subject to CDFW's LSA authority, pursuant to Fish and Game Code § 1600 et seq. However, the Project description does not clearly describe the morphology of the canals and ditches, so it is difficult for CDFW to determine which Project sites may be subject to Fish and Game Code § 1600 et seq. The Project may involve stream and ground-disturbing activities resulting in a substantial change of material from the bed, bank, or channel; and deposition of debris, waste, sediment, or other materials into water features causing water pollution that is deleterious to fish and wildlife. Project activities may also result in temporary or permanent impacts to freshwater marsh, wetland, and riparian habitats.

**Recommendation #4:** The draft EIR should clearly describe the morphology and hydrological function of canals and ditches associated with the Project so CDFW can determine if Project activities are subject to Fish and Game Code 1602.

**Recommended Potentially Feasible Mitigation Measures**

**Mitigation Measure #9: Habitat Assessment**

A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity supports freshwater marsh, wetland, and/or riparian communities. This survey should include, but not be limited to sensitive habitats associated with rivers, creeks or streams, ponds and drainages.

**Mitigation Measure #10: Notification of Lake and Streambed Alteration**



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Fish and Game Code §1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, as well as those that are perennial in nature. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

To determine if a Routine Maintenance Agreement (RMA) may be appropriate for this Project, the draft EIR should include a detailed description of each maintenance and repair Project, including location, frequency and timing. Stand-alone capital projects may not be appropriate under an RMA and may require a standard LSA Agreement. CDFW will coordinate with Valley Water further and provide additional guidance on the RMA and LSA permitting process.

**COMMENT #4:** Potential impacts to Crotch's bumble bee

**Issue:** Project activities, such as vegetation removal or ground-disturbing activities could result in permanent and/or temporary loss of floral resources for Crotch's bumble bee and other native pollinator species, loss of bumble bee nesting habitat, crushing, or filling of active bumble bee colonies and hibernating cavities, and reduced reproductive success. Bumble bees are critically important because they pollinate a wide range of plants over the lifecycles of their colonies, which typically live longer than most native solitary bee species. Unauthorized take of Crotch's bumble bee pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

**Recommendation #5:** Crotch's bumble bee is being considered as a Covered Species under the Habitat Plan amendment. As a co-permittee of the Habitat Plan, Valley Water could therefore receive take authorization for Crotch's bumble bee under CESA for the Project or a portion of the Project. Given that the amendment is only expected to be finalized by 2025, the draft EIR should clarify if Project activities expected to result in take of Crotch's bumble bee would be initiated prior to finalization of the Habitat Plan amendment. If Project activities may commence prior to coverage under the Habitat Plan, the draft EIR should include measures to avoid take of Crotch's bumble bee or specify that Valley Water will obtain an ITP prior to commencement of any Project-related construction activities that cannot avoid take.

**Recommended Potentially Feasible Mitigation Measures**

CDFW recommends that the draft EIR include the following mitigation measures to reduce impacts to less-than-significant levels:

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**Mitigation Measure #11:** A habitat assessment should be conducted within areas of all Project components by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumble bee. The habitat assessment should include all suitable nesting, overwintering, and foraging habitats within the Project area and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment should be conducted during the peak bloom period for floral resources on which Crotch's bumble bee feed. Further guidance on habitat surveys can be found within Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species (<https://wildlife.ca.gov/Conservation/CESA>).

The results of the assessment should be discussed in the draft EIR, and mitigation measures should be developed and included in the draft EIR to avoid or minimize impacts of the proposed Project to the Crotch's bumble bee and/or the species' habitats, and compensatory mitigation for all impacts to the species and its habitat that cannot be completely avoided.

**Mitigation Measure #12:** Based on results of the habitat assessment, surveys should be conducted within suitable Crotch's bumble bee habitat by a qualified entomologist familiar with the behavior and life history of the species. The survey plan should be submitted to CDFW for review and approval. If CESA candidate bumble bees will be captured or handled, surveyors should obtain any necessary handling permits such as a 2081(a) Memorandum of Understanding from CDFW. Surveys should be conducted during the colony active period or gyne flight season (generally, April 1 to October 31). The survey should occur at least two hours after sunrise (greater than 60°F and less than 90°F with no rain) or two hours before sunset and the survey area should include all suitable habitat within each of the Project component areas and a surrounding 100-foot buffer area. The survey duration should be appropriate to the size of the Project site and buffer area based on the metric of a minimum of one person hour of searching per three acres of suitable habitat; this will be an approximately 0.5-hour survey for an average sized Project site. Bumble bees move nest sites each year; therefore, surveys should be conducted each year that Project work activities will occur. Further guidance on presence surveys can be found within Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species (<https://wildlife.ca.gov/Conservation/CESA>)

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

**COMMENT #5:** Valley Water is a water district that implements and plans various projects within Santa Clara County.

**Issue:** Although activities proposed under the Project may occur within sections of canals and vary in location year to year, the Project may have cumulative impacts within a canal or its connecting streams and watersheds. The Project, along with other future larger-scale projects such as flood protection projects, maintenance projects, and other capital projects could further impact a variety of habitat types and species. Implementing both small and large-scale construction, repair and maintenance projects could result in impacts such as noise, groundwork, sediment, and deleterious material entering the stream, erosion, and other loss or modification of habitat that could significantly impact native species and their habitats.

**Recommendation #6:** The draft EIR should identify reasonably foreseeable 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). The draft EIR should clearly address if canals convey into any other waterway where other work is, or may be, conducted. 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 in water quality or 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 found 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

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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. (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 NOP to assist Valley Water in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alexandra Anstett, Environmental Scientist, at (707) 815-6427 or [Alexandra.Anstett@wildlife.ca.gov](mailto:Alexandra.Anstett@wildlife.ca.gov); or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Erin Chappell*

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Regional Manager  
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