



San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy to follow

November 8, 2023

Santa Clara Valley Water District
Attn: Tiffany Chao
5750 Almaden Expressway
San Jose, CA 95118
Email: ADSRPcomments@valleywater.org



Subject: Comments on Draft Environmental Impact Report for Anderson Dam Seismic Retrofit Project, Santa Clara County (SCH No. 2013082052)

Dear Ms. Chao:

The San Francisco Bay Regional Water Quality Control Board (Water Board) appreciates the opportunity to comment on the draft environmental impact report (DEIR) for the proposed Anderson Dam Seismic Retrofit Project (ADSRP or Project), prepared by the Santa Clara Valley Water District (Valley Water pursuant to the California Environmental Quality Act (CEQA) (State Clearinghouse No. 2013082052). This letter comments on the Project's potential environmental effects, potential alternatives to avoid and minimize impacts to aquatic resources, and compensatory mitigation for the Project's unavoidable impacts.

Project Purpose

Anderson Dam (Dam) is on Coyote Creek (Creek) and forms Anderson Reservoir in southern Santa Clara County. Built in the 1950s, the Dam is seismically deficient. The proposed Project would retrofit and reconstruct the Dam and associated facilities, including the Dam spillway, to meet current engineering design and public safety requirements; decommission the Dam's hydroelectric facility; construct, maintain, and/or operate conservation measures at various areas in Coyote Creek downstream of the Dam ("conservation measures"); and operate new reservoir rule curves ("flow measures"). Also, the Project includes changes in Valley Water's water rights at the Dam and other points in Coyote Creek, which will require Valley Water to obtain authorization from the State Water Resources Control Board (State Board) through water rights change petitions. CEQA compliance is part of the State Board's evaluation of the change petitions. The Project is planned to begin in 2026 and take 15 years, although the Dam elements would be

JAYNE BATTEY, CHAIR | EILEEN WHITE, EXECUTIVE OFFICER

completed during the first seven years. The flow measures would be implemented indefinitely under Valley Water's water rights.

The Project purpose is to reconstruct the Dam to meet current engineering and public safety pursuant to the California Division of Safety of Dams and Federal Energy Regulatory Commission (FERC). FERC is the lead federal agency due to the Dam's hydroelectric facility. Valley Water is currently implementing emergency actions in response to the FERC mandate issued to Valley Water in 2020 as the FERC Order Compliance Project (FOCP). The emergency actions include reservoir dewatering and flood risk management measures at the Dam and in various areas of Coyote Creek downstream of the Dam.

This environmental review is also for Fish and Aquatic Habitat Collaborative Effort (FAHCE) Program implementation in the Coyote Creek watershed. The FAHCE Program includes flow measures (reservoir rule curves), non-flow measures such as fish passage barrier removals, and adaptive management. This EIR covers the flow and non-flow measures for the Coyote Creek watershed, while the adaptive management plan is covered in the FAHCE Program EIR (SCH. No. 2015022008; Notice of Determination, August 2023).¹

Project Alternatives

In addition to the No Build Alternative, the DEIR evaluates the following four build alternatives:

- 1) Proposed Project—Valley Water's preferred alternative. From upstream to downstream, the main categories of Project elements are: (1) improvements to the Dam and associated elements (e.g., new spillway); (2) completing the North Channel construction; (3) post-construction monitoring of Live Oak Park enhancements in Coyote Creek; (4) implementing a gravel augmentation plan; (5) managing imported water discharges with chillers and the new Cross Valley Pipeline spur; (6) separating Coyote Creek from the Ogier Ponds complex and enhancing the Creek at this reach (6,500 linear feet); (7) constructing enhancements at the Coyote percolation pond bladder dam replacement project; and (8) implementing the "FAHCE" model for reservoir rule curves. The affected areas would also be regraded and revegetated.

¹ State Water Resources Control Board (2003). *Settlement Agreement Regarding Water Rights of the Santa Clara Valley Water District on Coyote, Guadalupe, and Stevens Creeks*. SB 320572 v1:007677.0001 01/06/2003. The Fish and Aquatic Habitat Collaborative Effort (FAHCE) is a program developed in 2003 in response to a water rights complaint that claimed Valley Water is mismanaging water supply and operations and harming steelhead and Chinook salmon. FAHCE is applicable to the Coyote Creek watershed, Stevens Creek watershed, and Guadalupe River watershed ("Three Creeks"). The FAHCE Program objectives are to: "restore and maintain fisheries, wildlife, water quality and other beneficial uses of the Three Creek in good condition", and "restore and maintain healthy (*Oncorhynchus mykiss*) and Chinook salmon populations as appropriate to each of the Three Creeks by providing suitable spawning and rearing habitat within the watershed, and adequate passage for adult steelhead trout and salmon to reach suitable spawning and rearing habitat and for out-migration of juveniles". Valley Water decided to cover the Coyote Creek flow and non-flow measures under the ADSRP EIR rather than under the FAHCE Program EIR (SCH. No. 2015022008; NOD, August 2023). However, adaptive management for all three watersheds including the Coyote Creek watershed is covered in the FAHCE Program EIR.

- 2) FAHCE-Plus Modified Alternative. This alternative differs from the proposed Project by implementing the FAHCE-Plus Modified reservoir rule curves instead of the FAHCE reservoir rule curves. The FAHCE-Plus Modified model would use more water and would have summer base flow adjusted to include a slight increase in temperature limits of summer cold water releases, which preserves water storage in the reservoir. The attracting pulse flows and outmigration pulse flows would be over wider timeframes and with higher flows rates and frequencies; and has more frequent safeguard pulse flows.
- 3) Increased Dredged Alternative. This alternative differs from the proposed Project alternative by dredging 1.4-million cubic yards of sediment that has accumulated behind the Dam and transporting it to sites downstream for beneficial reuse where suitable for this purpose, potentially at the Ogier Ponds reach and the South Bay Salt Pond Restoration area. This element's purpose would be to prevent significant, unavoidable adverse impacts on Creek habitat from sediment transported downstream to Coyote Creek during high flows, and to make space for new sediment loads carried into the reservoir.
- 4) Ogier Ponds Alternative. This alternative retains the proposed Project alternative elements but includes a different Creek alignment through the Ogier Ponds complex. This alternative would require acquisition of agricultural land and other properties and would fill about 1 acre of open water, specifically in Pond 1. The proposed Project would fill about 19 acres of open waters (all of Pond 1, and portions of others), and would not require acquiring new property.

Comments

Comment 1. Impacts to Federal and State Jurisdictional Wetlands and Other Waters

The Project has the potential for actions that will require the Water Board's approval under federal Clean Water Act (CWA) section 401, the California Water Code, and the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) for discharges of dredge and fill material. State Board will be the authorizing agency to issue a water quality certification (Certification) pursuant to these regulations because the Dam has a hydroelectric facility pursuant to FERC requirements.

Specifically, Basin Plan section 4.23 includes the California Wetlands Conservation Policy (No Net Loss Policy), which requires no net loss and a long-term net gain in the extent, functions, and values of wetlands, including riparian wetlands. The Water Board adopted U.S. EPA's *CWA Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredge or Fill Material*, dated December 24, 1980 (Guidelines), in the Basin Plan for determining the circumstances under which filling of wetlands, streams, or other waters of the State may be permitted. Additionally, the State Board adopted the *Procedures for the Discharge of Dredged or Fill Materials to Waters of the State* (Procedures) on April 2, 2019. The Procedures incorporated the Guidelines and detail the procedures for the submission, review, and approval of applications for activities that could result in the discharge of dredged and fill material to waters of the state. The Guidelines prohibit all discharges of fill material into regulated waters of the United States, unless a discharge, as proposed, constitutes the least environmentally damaging practicable alternative (LEDPA) that will achieve the basic project purpose. As such, before issuing a Certification, we (and State

Board) need to be able to find that the Project has avoided and minimized impacts to the maximum extent practicable as described in the Procedures and Basin Plan section 4.23.4.

Based on the DEIR, the Project, as proposed, would not comply with the Basin Plan or State water quality standards because the Project has impacts that are either not mitigated adequately or are inappropriately deemed less than significant, with no further mitigation proposed. These issues should be addressed in a comprehensive mitigation plan in the revised EIR. This will also be required for the Project's Certification application and for the Water Boards to be able to issue Certification for the Project.

For example, we are concerned that the DEIR indicates the impacts to Central California Coast steelhead, Chinook salmon, and Pacific lamprey (Impacts numbers FR-1a, FR-1b, and FR-1c, respectively) (Impact FR-1), the three anadromous fish species in Coyote Creek, would be less than significant (LTS). We disagree with this determination because the Dam will perpetuate ongoing degradation to the Creek, including blocking sediment and permanently altering the Creek's hydrology. These indirect adverse impacts could be partially mitigated by implementing appropriate reservoir rule curves, but the DEIR indicates Valley Water's preferred alternative proposes flow measures that would provide less benefits for special status species. We address this in more detail in Comment 2. Also, the Dam's footprint will be expanded by 8 acres (Table 2-1, footnote 2), and there will be a 23-acre Reservoir Disposal Area. These fills are examples of the impacts that should be avoided and minimized to the maximum extent practicable, and sufficient mitigation proposed for any remaining unavoidable impacts.

The Project would have significant unavoidable impacts due to excess siltation (Impact HYD-1) and to beneficial uses of waters of the State (WQ-1). It is our understanding that the Ogier Ponds conservation measure (see Comment 3) was developed over the course of the FOCPP permitting stages as assurance that it would be included in the ADSRP to mitigate for the multi-year adverse siltation impacts due to discharges of the sediment held back by the Dam for the past 70 years. This should be addressed in the DEIR in terms of compensation of impacts to different life stages of anadromous fish over a few generations, and to other native biota, and how the Project's enhancements could help compensate for the impacts by maximizing the enhancements. For significant, unavoidable impacts to beneficial uses of surface waters (Impact WQ-1), the DEIR indicates in Table ES-1, *Summary of Impacts and Mitigation* there are no mitigation measures proposed, yet the DEIR has a host of construction-related best management practices (BMPs). We appreciate the DEIR includes these BMPs, but additional compensatory mitigation should be proposed for the permanent degradation to beneficial uses. These issues should also be addressed in a mitigation and monitoring plan pursuant to the Basin Plan and No Net Loss Policy when submitting a Certification application.

Another shortcoming is that impacts to waters of the State in some cases are proposed to be mitigated by payment of fees to the Santa Clara Valley Habitat Agency. This is unlikely to be acceptable to the Water Boards, so additional mitigation would be necessary (see Comment 8).

Valley Water is developing a habitat mitigation and monitoring plan (HMMP) for the FOCPP. To address the lack of sufficient mitigation in the DEIR, Valley Water may opt to add to the existing HMMP or develop a separate plan for the ADSRP. The combination of plans for

both the FOC and HMMP would be appropriate because the HMMP covers FOC elements for which ongoing monitoring, maintenance, and/or construction will need to occur under the ADSRP. Regardless of whether Valley Water opts to combine the mitigation plans for the FOC and ADSRP into a single plan, the DEIR should be revised with the HMMP included as an appendix with the EIR.

Comment 2. Recommendation to Adopt the FAHCE-Plus Modified Alternative for the Flow Measures Element of the Project

The DEIR indicates that the FAHCE-Plus Modified alternative is the environmentally superior alternative because it provides more benefits than the Project's FAHCE rule curves for special-status fish species, specifically for steelhead, Chinook salmon, Pacific lamprey, southern coastal roach, and Sacramento hitch. Therefore, we urge Valley Water to adopt the FAHCE-Plus Modified alternative because it would maximize Coyote Creek's beneficial uses, including fish migration (MIGR), spawning habitat (SPWN), preservation of rare and endangered species (RARE), cold freshwater habitat (COLD), warm freshwater habitat (WARM), water-contact recreation (REC1) and non-contact recreation (REC2), and groundwater recharge (GWR). The benefits of the FAHCE-Plus Modified alternative are due to more water being dedicated to environmental flows (attraction pulse flows, out-migration pulse flows, and safeguard flows) than the FAHCE rule curves, with more expanded pulse flow windows, more frequent pulse flows, longer durations, and higher flow rates. The FAHCE-Plus Modified alternative would maximize the environmental benefits of the Project's other habitat improvements being constructed with the FOC, such as large wood installations and the gravel augmentation program.

Pursuant to CEQA, Valley Water is not obligated to adopt the environmentally superior alternative, but the FAHCE Program objectives hold Valley Water to a higher bar than what CEQA alone obligates. This is important because this CEQA review is intended to meet the requirements of the FAHCE settlement agreement flow and non-flow measures for the Coyote Creek watershed (see footnote 1).

To meet the FAHCE Program objectives, the best possible flow regime is necessary to reverse the declining trends in steelhead and Chinook salmon populations in the Coyote Creek watershed (and in the other watersheds covered in the FAHCE Program) and to mitigate for the Dam's effects (see Comment 1). National Marine Fisheries Service (NMFS), which is the lead agency for protection of steelhead, a federal threatened species and State species of special concern, stated that "extraordinary actions" are necessary (NMFS, 2023²). Adopting the FAHCE-Plus Modified alternative would better align with the urgent improvements needed to fulfill the FAHCE settlement agreement than the proposed Project's FAHCE rule curves.

The FAHCE rule curves provide incremental improvements over the CEQA baseline conditions, but the FAHCE-Plus Modified would have greater certainty in connecting the watershed-wide habitat elements between the natal riverine waters and marine waters necessary for anadromous fish in Coyote Creek, including steelhead and Chinook salmon,

² National Marine Fisheries Service (NMFS), 2023. Letter from NMFS (Brian Meux, Acting San Francisco Bay Branch Chief, North Central Coast Office) to Valley Water (John Bourgeois, Deputy Director, Watershed Stewardship and Planning, Valley Water).

which are part of the FAHCE Program (see footnote 1), as well as Pacific lamprey. The FAHCE-Plus Modified alternative would maximize the synergy between all the Project's enhancements in addition to those being constructed with the FOCP (e.g., large wood, gravel augmentation). In contrast, implementing the less-superior FAHCE rule curves would diminish the potential benefits of these other enhancements. For these reasons, the FAHCE-Plus Modified alternative should be adopted.

Also, the DEIR indicates that through adaptive management the Dam flow releases may be modified if the flows are not functioning as intended or do not meet measurable objectives (p. 3.13-21 (lines 30-31)). This is also part of the FAHCE Program settlement agreement, which allows for curtailment of environmental flows. The groundwater recharge (GWR) and municipal and domestic supply (MUN) beneficial uses of Anderson Reservoir would be prioritized, as appropriate, by scaling back or not initiating environmental flows.

There is enough water available for the FAHCE-Plus Modified alternative without sacrificing Valley Water's important missions for water supply and groundwater recharge, necessary for drinking water and for preventing land subsidence, thereby preserving Coyote Creek's GWR beneficial use and Anderson Reservoir's GWR and MUN beneficial uses.³ (DEIR, p. 3.13-1) There is a surplus of 305,000 acre-feet of water by 2045, based on the water supply and demand values reported in DEIR Tables 3.13-1 and 3.13-2, respectively.⁴ The FAHCE-Plus Modified alternative would use about 3.4 percent of this surplus (10,373 acre-feet per year (DEIR Table 5-7)). This is a reasonable use of water and therefore would support Valley Water's intention of adding the *Fish and Wildlife Preservation and Enhancement* beneficial use for Valley Water's water rights change petition.

The FAHCE rule curves with the proposed Project, however, would result in holding water in Anderson Reservoir to hedge against risk of future dry conditions. However, the water projections already account for such uncertainty, so it is unclear why Valley Water would not adopt the environmentally superior alternative. Adopting the superior FAHCE-Plus Modified rule curves would be appropriate and practicable, relative to the proposed Project's FAHCE rule curves.

U.S. Fish and Wildlife Service (USFWS) commented that the increase in cool water caused by the environmental flows would adversely impact Western Pond turtle (proposed for federal listing as threatened)⁵. This concern could potentially be alleviated by designing a complex habitat in the Ogier Ponds conservation measure such as side channels that would have warmer water than the main channel. This design approach is also recommended by

³ DEIR (p. 3.13-1): "Based on projected demands, and existing and planned sources of supply, Valley Water estimates that it would be able to meet countywide demands through 2045 under normal, a single dry, and 5 consecutive dry year conditions."

⁴ The average annual County-wide water supply would increase to 650,000 acre-feet by 2045 (Table 3.13-1), and demand is projected to be 345,000 acre feet (Table 3.13-2) resulting in a surplus of 305,000 acre-feet. The water demand for FACHE-Plus Modified is estimated at 10,373 acre feet or less, each year (Table 5-7), which is 3.4 percent of the surplus volume. The volume of the FAHCE rule curves is 104 acre-feet (Table 5-5), about 0.03 percent of the surplus volume.

⁵ U.S. Fish and Wildlife Service (USFWS), 2023. Letter from Vincent Griego, USFWS, Acting Coast Bay Division Supervisor, to Tiffany Chao, Valley Water, re. comments on the DEIR. October 2, 2023.

California Department of Fish and Wildlife (CDFW) (CDFW, 2023⁶) for other reasons also related to temperature and increased productivity on the floodplains which translates to better juvenile growth in salmonids. (See also Comment 3 for additional details).

It is important to note that the FAHCE-Plus Modified rule curves have not yet been evaluated with the Water Evaluation and Planning (WEAP) System flow model. The DEIR projections and conclusions about the FAHCE-Plus Modified rule curves are derived from the WEAP modeling results of the FAHCE-Plus rule curves evaluated in the FAHCE EIR. We recommend Valley Water run the WEAP System model for the FAHCE-Plus Modified to fully evaluate this alternative for the final EIR (if possible, to do so without delaying the Project). We also recommend the final EIR include additional details to characterize the nuances between the FAHCE-Plus rule curves and FAHCE-Plus Modified rule curves.

Finally, we recommend inclusion of the adaptive management plan as an appendix with the final EIR. The plan was vetted already with the FAHCE Program EIR (FAHCE EIR, Appendix A, Chapter 6). Including it in an appendix with this EIR would provide additional context for this project's flow and non-flow measures and how they will be managed for the long-term. The abbreviated version in the DEIR does not provide the level of details needed.

Comment 3. Ogier Ponds Conservation Measure Project Design

The Ogier Ponds conservation measure will restore and enhance 6,500 linear feet of Coyote Creek by separating the Creek from the Ogier Ponds complex, which are former quarry ponds. Maximizing the benefits of this reach would help to compensate for the significant, unavoidable impacts of fine sediment projected to be discharged through the outlet structure during Dam reconstruction while Anderson Reservoir is dewatered, and for the ongoing indirect adverse impacts of the Dam that will continue indefinitely. Constructing the widest floodplain feasible that can support inundation under a variable flow regime would maximize habitat complexity and diversity in this reach, such as a meandering low-flow channel with side channels and alcoves. This could support all life stages of steelhead and Chinook salmon, as well as basking and nesting areas for Western pond turtle and other native species. Also, we urge Valley Water to incorporate biologically relevant design criteria such as targets for acre-days per year for floodplain inundation provided by California Department of Fish and Wildlife (CDFW, 2023; see footnote 4).

The DEIR states that the channel design will (1) be geomorphically stable, (2) have high-flow refugia and other habitat diversity elements on the floodplains, and (3) be designed to carry 50 cubic feet per second (cfs) in the low-flow channel. The DEIR should be revised to include more information to support the project design at the Ogier Ponds reach. For example:

- How would the separation levee differ from the pre-1997 levee that breached and resulted in the Creek to be entrained in the ponds?

⁶ California Department of Fish and Wildlife (CDFW), 2023. Email from Mark Gard, PhD, CDFW Engineer, to Valley Water. September 15, 2023.

- What is the bankfull flow of the Creek at this reach, and what are the channel dimensions for the effective discharge (similar to the bankfull flow) to ensure dynamic equilibrium of sediment transport through this reach?
- The DEIR states that the 2-year return period will be an artificial flow governed by routine releases once the new rule curves are adopted (regardless of which rule curve model) (DEIR, Appendix K-Hydrology Technical Memorandums [sic], “Technical Memorandum, Potential Flood Impacts for ADSRP”, August 22, 2023. See Table 1, FAHCE Ops, at PDF p. 129). This managed flow target would be 50 cfs. Please clarify how this flow rate compares to proposed channel dimensions for the bankfull flow or effective flow.
- The Project would have an outlet weir (“spillway” (Figure 2-11)) to release high flows into the ponds. What is the return period frequency and flow rate for the outlet weir? Please evaluate the feasibility of constructing a floodplain wide enough to temporarily store these episodic high flows rather than being diverted into Ogier Ponds. We would support filling more open waters in the ponds complex to allow for a wider floodplain along the Creek to maximize the beneficial uses of the Creek. The metrics to justify this may be evaluated with CDFW’s analysis noted above (CDFW, 2023; see footnote 4).
- We request Valley Water evaluate the feasibility of including the area northwest of Pond 5, currently designated for staging/stockpiling (DEIR, Figure 2.11 (p. 2-31)) as part of the creek restoration design. Even with the level of details currently available, it appears this area could be captured within the Creek design. This could help to provide more space for Creek complexity and habitat diversity. As proposed, the Project design avoids this area without any explanation. If incorporating this area into the Creek design is not feasible, please provide evidence and reasons for this.
- We understand this Project element would not be constructed until completion of the Dam reconstruction elements. The DEIR should be revised to include a monitoring plan of Coyote Creek from the start of ADSRP to track Creek flow as the conditions upstream are modified with the Project.

Finally, with the level of uncertainty in the design of this element at this point, please clarify if additional CEQA review would be conducted after this EIR is completed and after additional design details are determined.

Comment 4. Impacts at Coyote Percolation Pond

For the ADSRP, the Phase 2 Coyote Percolation Dam Fish Passage Enhancements would include the construction of a roughened ramp fishway below and up to the bladder dam. This “phase 2” project will supplement the bladder dam replacement project currently being constructed under the FOCP as “phase 1” to replace the existing flashboard dam. However, the bladder dam will not comply with CDFW and NMFS fish passage criteria, even with the new fish ramp. The Project also would retain the existing adverse indirect impacts of the impoundment behind the dam. The impoundment forms a thermal migration barrier and a deep and long quiescent pool which does not support the cool, flowing water necessary for salmonid fish migration cues. The pool also serves as habitat for non-native fish that prey on migrating salmonids. The Project would therefore adversely impact MIGR, RARE, and COLD beneficial uses of Coyote Creek. The DEIR should be revised to account for these

adverse impacts (Impact FR-1, WQ-1) and provide appropriate mitigation to compensate for the degradation to fish passage and other adverse conditions caused by the Project.

Offstream recharge may be part of the Coyote Facilities Plan listed in DEIR Table 2-1 as one of the FAHCE settlement agreement elements, specifically in the Metcalf Ponds Sream Corridor Restoration element of the Coyote Facilities Plan, but the settlement agreement only requires that the plan is evaluated; it does not necessarily require implementation. Valley Water has already started reviewing feasibility of offstream recharge at this site.⁷

We encourage Valley Water to pursue that alternative as part of a complete mitigation plan for the bladder dam's adverse impacts. Otherwise, please provide other mitigation that would be appropriate.

Moreover, as discussed above (Comment 1), the Water Boards can approve a project only if the applicant has demonstrated that adverse impacts are avoided and minimized to the maximum extent practicable, and that the project does not cause or contribute to degradation of waters of the state. If the project's resulting degradation of the fish habitat and the Creek's beneficial uses cannot be avoided or minimized, compensatory mitigation will be required to meet the No Net Loss policy. Please provide more information on proposed remediation measures for fish passage and how other future projects may address these problems in the long-term, especially for off-stream aquifer recharge designs and removing the percolation pond dam from Coyote Creek.

Comment 5. Temperature Significance Threshold and Temperature Monitoring

Section 3.14-21 states that the average daily temperatures exceeding 71.6 °F (22 °C) in the cold water management zone (CWMZ) were selected as the significance threshold. Please clarify the following issues.

- Please clarify how this would meet the FAHCE Program temperature threshold of 18 °C during May 1 through October 31 in the CWMZ.
- How is the average daily temperature computed? For example, would the 71.6 °F (22 °C) threshold be based on the maximum weekly average temperature (MWAT)?
- Regarding discharges of imported water from the Cross Valley Pipeline to Coyote Creek, the DEIR states "There is no temperature limitation for use of imported water in this manner" (DEIR p. 3.14-22). This allows for managed aquifer recharge

⁷ The Valley Water Capital Improvement Program Meeting Agenda, April 10, 2023, Item 4.1, states: "On the three Water Resources Stewardship projects, namely, Metcalf Pond Feasibility Study Project... staff would include additional details of project progress on future status reports to this Committee." (Available online at: <https://s3.us-west-1.amazonaws.com/valleywater.org.us-west-1/s3fs-public/041023%20CIP%20Approved%20Minutes.pdf>. Accessed October 20, 2023.) Additional examples of Valley Water's evaluations of the Metcalf Ponds Sream Corridor Restoration element of the Coyote Facilities Plan include the following: 2020–2024 Five-Year 2020–2024 Five-Year Capital Improvement Program, https://www.valleywater.org/sites/default/files/2019-05/CHAPTER%2004%20Water%20Resources%20Stewardship_optimized.pdf (accessed October 20, 2023), and 2018 draft report attached to January 18, 2018, Capital Improvement Program committee agenda, https://s3.us-west-2.amazonaws.com/assets.valleywater.org/011818_CIP_Agenda.pdf (accessed October 20, 2023).

and meets minimum in-stream flow requirements. This would result in flows in Coyote Creek, and the maintenance of groundwater levels, that would help support multiple beneficial uses.” Please note that the Basin Plan temperature objective requires that the temperature of any cold or warm freshwater habitat shall not be increased by more than 5°F (2.8°C) above natural receiving water temperature. To address this, we recommend the receiving water downstream of any discharge or Project activity that could alter water temperature be monitored for temperature to prevent exceedance of the temperature objective, and to determine when to implement native biota rescue and relocation actions if there is a risk of exceeding the Basin Plan temperature objective.

- For temperature monitoring at the new Dam outlet works, would it be feasible to incorporate automated temperature loggers? If not, please explain why. This was raised during an interagency meeting on September 19, 2023, by NMFS staff as a very important issue. We support the request because it would help optimize the flow combination for the multi-port outlet works, thereby protecting or enhancing Coyote Creeks COLD, MIGR, SPWN, and RARE beneficial uses.

Comment 6. New and Redeveloped Impervious Surfaces

Valley Water should ensure stormwater runoff from new impervious surfaces and redeveloped impervious surfaces, including gravel roads, is treated before it reaches a storm drain or water of the State, pursuant to the Provision C.3 of the NPDES Municipal Regional Stormwater Permit (Order No. R2-2022-0018, or most recent revision; NPDES Permit No. CAS612008). For example, this applies to the new road along the top of Anderson Dam, and potentially to the repaving projects for Cochrane Road. To issue a Certification, we require a plan that describes how runoff from impervious surfaces will be controlled and treated. We prefer nature-based BMPs to capture, detain, and treat stormwater runoff as close to the runoff site as possible.

Comment 7. Soil and Sediment Management Plan Details

The Project has several areas for which soil or sediment would be discharged to waters of the State, but additional details are needed to characterize these discharges. To address this, we recommend Valley Water develop a soil management plan with details for soil or dredged sediment sources, quality, borrow sites, volumes, discharge points, and export from the Project. This would also be needed for the Project’s Certification application. To evaluate the suitability of excavated soil for beneficial reuse, please perform soil testing of the source material for the analytes in Table 4 in *Draft Staff Report, Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines, May 2000 (with minor corrections as of 3/14/19)*, which is available from Water Board staff upon request, and at the following URL:

https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/dredging/Beneficial%20Reuse%20of%20Dredged%20Material_2019%20corrections.pdf. We recommend the sampling and analyses be conducted as soon as possible to develop an acceptable soil management plan and avoid delays in our approval of the plan.

We also recommend creating a table in the EIR to show these soil and sediment actions by year. For example, about 1,490,000 cubic yards of soil is proposed for disposal in the reservoir in the 23-acre designated area called Reservoir Disposal Area over different years

(DEIR p. 2-52, Table 2.8, Figure 2.4), but it is not clear whether the discharge point for 33,000 cubic yards of sediment noted in section 2.5.4.5, referenced as the ATDP (i.e., Anderson Dam Tunnel Project) disposal site, is the same as the Reservoir Disposal Area. Consolidating the various soil and sediment information into a table in the DEIR could help clarify such issues.

Comment 8. Santa Clara Valley Habitat Plan (VHP) and Payment of VHP Fees

To meet the State's No Net Loss Policy, the Project should identify specific mitigation projects that provide sufficient compensatory mitigation for impacts to waters of the State. The sole mitigation plan in the DEIR appears to be payment of VHP fees for the impacts to VHP-covered species, which we cannot accept. The Water Boards can, however, accept the purchase of mitigation credits from an approved Mitigation Bank (Bank) or an approved In Lieu Fee (ILF) Program, when the credits available at a Bank or ILF Program are in-kind (i.e., the same type of aquatic habitat as will be impacted by the project) and the impacts occur within the Bank's or ILF Program's service area.

To address this, please propose an appropriate mitigation plan to address impacts to wetlands and other waters of the State, through purchase of appropriate Bank or ILF Program credits, or through compensatory mitigation projects (or combination of credits and compensatory mitigation project(s)). Accordingly, the mitigation plan would need to be part of a Certification application. As noted in Comment 1, we would accept the plan as part of the HMMP being developed for the FOCP (noted in Comment 1), or a separate plan specific to the ADSRP.

Comment 9. Decommissioning of Hydroelectric Facility

Please explain how decommissioning of the hydroelectric facility at the Dam would affect the Water Board's CWA section 401 Certification for the Project. Valley Water anticipates surrendering the FERC license exemption associated with the Dam once the Dam meets FERC and DSOD safety requirements. However, the Project duration extends for another 8 years after Dam reconstruction. Please explain the roles of each authorizing agency once the surrender request is approved. For example, NMFS and USFWS are consulting with FERC as the lead federal agency. Would their roles and requirements discontinue upon FERC's approval of the surrender?

Comment 10. Miscellaneous Additional Comments

- Total Suspended Solids Measurements. The DEIR states in various places: "TSS is a measure of SSC" (where TSS is total suspended solids and SSC is suspended sediment concentration). This is incorrect and should be clarified. Specifically, we request Valley Water clarify how TSS would be used instead of SSC to estimate sediment transport through the dam outlet works and through Coyote Creek to San Francisco Bay via Alviso Slough. This reiterates our comments and request for this information in the State Board Deputy Director's approval of the FOCP sediment monitoring plan (September 10, 2021) to provide a rationale for using TSS. It appears that for the ADSRP, TSS and SSC are used interchangeably in the sediment modeling without explanation or justification.
- Pesticides and Toxicity in Urban Creeks. This section references the Water Board's total maximum daily load (TMDL) plan for toxicity in urban creeks (2005), but called it

the “Urban Creeks Dioxin Pesticide Toxicity TMDL.” The correct name of the TMDL plan for toxicity in urban creeks is “Diazinon and Pesticide-Related Toxicity in Urban Creeks TMDL.” We may require additional monitoring downstream of the dam pending our reviews of reservoir sediment analyses, because the TMDL identified sediment loads as a source of pesticides or result in toxicity in a creek. Diazinon and associated toxicity in creeks have declined, as noted in the DEIR, which is likely due to the diazinon ban, but legacy pesticides in sediment can still impact creek systems.

- Water Board Permits Applicable to the Project (Table 2.2). Two additional permits should be added to Table 2.2:
 - (1) San Francisco Bay Region Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, or most recent revision; NPDES Permit No. CAS612008) (see comment 5).
 - (2) California Statewide NPDES Permit for Discharges from Drinking Water Systems (Order WQ 2014-0194-DWQ, or most recent permit revision; NPDES No. CAG140001CAG140001). This permit is applicable to the discharges of the filtration waste from the chillers’ filtration system. Valley Water is already an enrollee under this general permit so no new action is required, though this permit should be included in the DEIR, Table 2.2.
- Dissolved Oxygen (DO) Objective. DEIR Section 3.4, Fisheries (lines 3–7) states: “The Basin Plan indicates that the DO objectives for Coyote Creek waters designated as COLD have minimum instantaneous DO of 7 milligrams per liter (mg/L) with exposure of 3.5 days at DO concentrations of 3 mg/L or lower as the threshold at which mortality begins (USEPA 1986).” Please note that the Basin Plan dissolved oxygen objective does not include “with exposure of 3.5 days at DO concentrations of 3 mg/L or lower as the threshold at which mortality begins.” Please clarify the 3.5-day threshold, and note in the DEIR that it is not part of the Basin Plan DO objective. Also, it appears that the U.S. EPA reference from 1986 was omitted in References sections in the DEIR. Please include it if it is intended to inform DO management for the Project. As presented in the DEIR, this threshold would not comply with the Basin Plan.
- Table 5-8-*Summary of Impact Determinations for the Project and Alternatives* column heading for “FAHCE-Plus Enhanced” should be corrected to “FAHCE-Plus Modified”.
- Operations and Maintenance Plans. We recommend the DEIR being revised to include a process for Valley Water to prepare O&M plans for the Project’s flow and non-flow measures, to revise the O&M plans periodically, and for revisions to be vetted with the FAHCE Adaptive Management Team. The O&M plans and process for revisions and Adaptive Management Team reviews will also need to be included in a Certification application for the Project.

Closing

We appreciate Valley Water regularly facilitating interagency meetings with us and other agencies with authority over the project. We request Valley Water continue to engage with

us, particularly so that we can participate on the FAHCE Adaptive Management Team. We look forward to continuing to work with you on this important project. If you have any questions, please contact Susan Glendening of my staff by email to susan.glendening@waterboards.ca.gov or at (510) 622-2462.

Sincerely,



Digitally signed by
Keith H. Lichten,
Division Manager
Date: 2023.11.08



13:15:53 -08'00'

Keith H. Lichten, P.E.
Division Manager
Watershed Management Division

cc: State Clearinghouse: state.clearinghouse@opr.ca.gov

Valley Water:

Chris Hakes, CHakes@valleywater.org

John Bourgeois, JBourgeois@valleywater.org

Kurt Lueneburger, KLueneburger@valleywater.org

Wendy Young, WYoung@valleywater.org

Lisa Porcella, LPorcella@valleywater.org

Corps, SF Regulatory:

Sarah Firestone, Sarah.M.Firestone@usace.army.mil

Katerina Galacatos, Katerina.Galacatos@usace.army.mil

CDFW

Brenda Blinn, Brenda.Blinn@wildlife.ca.gov

Mayra Molina, Mayra.Molina@wildlife.ca.gov

FERC:

Holly Frank, Holly.Frank@ferc.gov

Jennifer Ambler, Jennifer.Ambler@ferc.gov

NMFS:

Darren Howe, darren.howe@noaa.gov

Gary Stern, gary.stern@noaa.gov

Page Vick, page.vick@noaa.gov

Santa Clara County Parks, Jeremy Farr, jeremy.farr@PRK.SCCGOV.ORG

USFWS:

Joseph Terry, joseph_terry@usfws.gov

Ryan Olah, ryan_olah@usfws.gov

U.S. EPA, Luisa Valiela, Valiela.luisa@epa.gov

Valley Habitat Agency:

Gerry Haas, gerry.haas@scv-habitatagency.org

Ed Sullivan, edmund.sullivan@scv-habitatagency.org

State Board:

Eric Bradbury, Eric.Bradbury@waterboards.ca.gov

Oscar Biondi, Oscar.Biondi@waterboards.ca.gov

Mina Mohammadzadeh, Mina.Mohammadzadeh@Waterboards.ca.gov

Steve Marquez, Steve.Marquez@waterboards.ca.gov