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November 3, 2023

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Subject: Anderson Dam Seismic Retrofit Project, Draft Environmental Impact Report,
SCH No. 2013082052, Santa Clara County

Dear Tiffany Chao:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (EIR) from the Santa Clara Valley Water District (Valley Water) for the Anderson Dam Seismic Retrofit Project (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.

In a revised Notice of Availability dated October 18, 2023, Valley Water extended the public review and comment period from November 1, 2023, to November 8, 2023.

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

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proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by state law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

WATER RIGHTS

The use of unallocated stream flows is subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1200 et seq. CDFW, as a Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the state's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, and which in turn are reliant upon adequate flows of water. CDFW, therefore, has a material interest in assuring that adequate water flows are present within streams for the protection, maintenance, and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from Project activities.

PROJECT DESCRIPTION SUMMARY

Proponent: Valley Water

Objective: The objectives of the proposed Project are to seismically retrofit, maintain, and operate Anderson Dam and Reservoir to meet the Federal Energy Regulatory Commission (FERC) and the Department of Water Resources, Division of Safety of Dams (DSOD) safety requirements; improve cost-efficiency of dam operations by decommissioning the hydroelectric facility; and avoid and minimize environmental effects of construction and operations.

Location: The Project includes several components. The Seismic Retrofit is located at Anderson Dam and Reservoir approximately 18 miles southeast of downtown City of San Jose and 2.5 miles northeast of downtown City of Morgan Hill, within the Coyote Creek Watershed. The Conservation Measures component includes Ogier Ponds, the North Channel Extension, Sediment Augmentation Program, Phase 2 Coyote Percolation Dam, and the Live Oak Restoration, which occur downstream of Anderson Dam along Coyote Creek. The Post-Construction Anderson Dam Facilities Operations would cover the Coyote Creek Watershed.

Timeframe: The Project is proposed to be implemented in various stages. Construction for the Seismic Retrofit component is proposed to occur over seven years. However, several post-construction Project components including facilities operation and

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maintenance, conservation measures operations and maintenance, and monitoring and adaptive management will extend well beyond the seven-year construction period.

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

I. Introduction and Project Description

COMMENT #1: Executive Summary and Chapter 2: Project Description and Objectives

Issue: The draft EIR describes the Post-Construction Project including operating Anderson Reservoir in accordance with the Fish and Aquatic Habitat Collaborative Effort (FAHCE) rule curves and addressing both flow and non-flow measures of the FAHCE settlement agreement initialed by several parties, including CDFW, in 2003. The FAHCE Final Program Environmental Impact Report for Guadalupe River and Stevens Creek Watershed, which was certified by Valley Water on August 8, 2023, does not include impacts to the Coyote Creek Watershed. Therefore, the EIR should fully describe the Project objective related to FAHCE.

Recommendation: CDFW recommends that the EIR include the following objective related to FAHCE: "Restore and maintain healthy steelhead and Chinook salmon populations in the Coyote Creek watershed by providing suitable spawning and rearing habitat, adequate passage for upmigrating adults and outmigrating juvenile fish, and extended distribution of suitable habitat in Phases 2 and 3 as determined through the Adaptive Management Program [AMP]". This would mirror the objectives in the FAHCE Final EIR and settlement agreement.

Issue: Related to the objective for FAHCE referenced above, as one of the projects of the Conservation Measures component, the restoration of Ogier Ponds is proposed to minimize impacts of the Project on Coyote Creek. Through various collaborative technical meetings with Valley Water and other regulatory agencies, CDFW's engineering staff provided comments on the designs for the Conservation Measures in July 2023 for the Live Oak Restoration and September 2023 for the Ogier Ponds. Although CDFW continues to provide guidance during various meetings with Valley Water, some of our comments can be found as attachments to this comment letter (see Attachments A, B, C and D). The draft EIR does not present an alternative for the Ogier Ponds project that addresses CDFW's previously-submitted recommendations.

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Recommendation: For Ogier Ponds, CDFW engineering staff evaluated the six alternatives Valley Water proposed that would disconnect Ogier Ponds from Coyote Creek. CDFW provided analyses showing that other alternatives may be possible for the Ogier Ponds project, including an alternative with all the ponds filled and a larger floodplain created (Attachments A, B and C).

CDFW calculated that the floodplain restoration goal to mitigate the impacts of the Project on Coyote Creek flows is 2,306 acre-days (Attachment C Coyote Creek Floodplain Restoration Goals). This could be met by constructing 299 acres of floodplain that inundate at 113 cubic feet per second (cfs) or 210 acres of floodplain that inundate at 90 cfs. This memo was provided to Valley Water in September 2023. CDFW, therefore, recommends that the EIR present this design as the preferred alternative for the Ogier Ponds restoration project in order to achieve this feasible floodplain restoration goal.

For the Live Oak Restoration project, CDFW engineering staff provided comments to Valley Water on July 18, 2023, related to installation of large woody debris and recommendations for the modeling of the project (Attachment D).

CDFW recommends that the EIR fully evaluate the proposed alternatives for the Conservation Measures and address questions and concerns previously expressed by CDFW engineering staff. The EIR should pursue and further develop alternatives that feasibly maximize benefits to Central California Coast steelhead (*Oncorhynchus mykiss*), which is federally threatened under the Endangered Species Act (ESA), and other native fish and wildlife species.

Issue: The draft EIR states that the Phase 2 Coyote Percolation Dam Fish Passage Conservation Measures will “consist of constructing downstream channel modifications to install a roughened ramp downstream of, and approaching, the dam to facilitate upstream and downstream fish passage over the deflated bladder dam over a range of flow conditions.” This Conservation Measure is currently in the conceptual design phase and coordination with CDFW engineering staff and other resource agencies will be needed to ensure that the project addresses fish passage (for all life stages) through this facility.

Recommendation: CDFW recommends that the EIR include more developed project designs beyond the conceptual phase for the Phase 2 Coyote Percolation Dam project in order for CDFW to evaluate all potential benefits of the Project on native species and their habitats. The Project should be designed to ensure that it provides safe, timely and effective fish passage over a wide range of flows and for all life history stages of native fish, primarily steelhead, but also consider other native fish such as Pacific lamprey (*Entosphenus tridentatus*), which is a state Species of Special Concern (SSC). The EIR should include a measure stating that Valley Water will develop the fish passage facility

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in consultation with CDFW and other resource agencies such as National Marine Fisheries Service (NMFS).

COMMENT #2: Executive Summary, ES.6.2.12 Payment of Santa Clara Valley Habitat Conservation Plan Impact Fees

Issue: The draft EIR states “The Project is a covered activity under the Santa Clara Valley Habitat Plan (SCVHP).” Similar comments are made throughout the draft EIR, but based on the SCVHP not all the Project’s activities may be covered under the SCVHP. For example, the SCVHP states “Anderson Reservoir is covered up to 3.5 years for a dewatering event associated with a seismic safety retrofit...” The draft EIR states that Anderson Reservoir will be dewatered for approximately four years or more. Additionally, in Chapter 3 Biological Resources – Terrestrial Resources, the draft EIR states that the SCVHP does not cover all Project activities which conflicts with prior statements in the Executive Summary and other sections prior to Chapter 3.

Recommendation: CDFW recommends that the EIR clearly describe the Project activities that will and will not be covered under the SCVHP within the Project Description. Additionally, impacts to species and habitats from activities not covered by the SCVHP should be clearly described and mitigation measures should be included in the EIR as appropriate.

COMMENT #3: Chapter 1, 1.3.4 Fish and Aquatic Habitat Collaborative Effort

Issue: The draft EIR states “Valley Water has prepared an FHRP [Fish Habitat Restoration Plan] to comprehensively implement the FAHCE *Settlement Agreement* (see Appendix B for portions of the FHRP applicable to Coyote Creek) ...” but the appendix is not included in the draft EIR. Additionally, some of the measures in the FHRP overlap with the Conservation Measures (Chapter 2, 2.6 Conservation Measures Construction) of the Project, but the draft EIR does not clarify which of the Conservation Measures are also part of the FHRP measures and what additional projects (measures) will be implemented as part of the FHRP related to the Project. Overlap between the FHRP and the draft EIR Conservation Measures could result in discrepancies in timing of Project implementation and schedules of Project activities, responsible entities and Project partners, Project permitting and other key factors.

Recommendation: In addition to the FHRP appendix being included in the EIR, CDFW recommends that the EIR clarify which measures in the FHRP overlap with the Project’s Conservation Measures. If planning or implementation timeframes or other potential conflicts or discrepancies may exist between the Conservation Measures as described in the draft EIR and those of the FHRP, the EIR should be very clear on implementation schedule and responsible entity and avoid any conflicting language in each set of

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measures. A table of the measures with other clarifying information could be included in Chapter 1 to help clarify the overlap.

COMMENT #4: Chapter 2, Table 2-1, Page 2-22 – Phase 2 Coyote Percolation Dam and Fish Ladder Operations Plan

Issue: The draft EIR, under Chapter 2, Table 2-1 on page 2-22, under the Post Construction Phase (O & M) column, states, “Guidance for operational activities would be developed in coordination with NMFS”.

Recommendation: CDFW is a responsible agency as well as a trustee agency for the Project, and will therefore, require significant coordination with Valley Water on Post Construction operations and maintenance activities, and flow regimes. CDFW, therefore, recommends that the EIR specify that Valley Water will coordinate with CDFW as well as other state and federal agencies with regulatory jurisdiction over the Project. Coordination for the Post Construction Phase may also be appropriate as part of the FAHCE Adaptive Management Team and to integrate into the FAHCE AMP.

II. Environmental Setting

COMMENT #5: Chapter 3, 3.5 Biological Resources – Wildlife and Terrestrial Resources, Impact TERR-1h: Pallid Bat (*Antrozous pallidus*)

Issue: As the draft EIR states, a maternity pallid bat (*Antrozous pallidus*) colony has been active in the Cochrane Road barn located near the Anderson Dam since 1998. Pallid bat is designated as a state SSC. The draft EIR states the barn has supported up to 105 females, which use the roost year-round, and this colony likely represents the largest and most stable colony known in Santa Clara County. Although the draft EIR states that the proposed Project will not result in demolition of the barn, Project activities that may disturb the bats include noise associated with construction equipment and generators; lighting from nighttime activities; and impacts to foraging habitat. These activities have the potential to disturb bats as they roost in the barn or nearby trees, or when they forage, resulting in avoiding foraging or roosting sites, abandoning the roost or young (which may lead to mortality), and other impacts such as reduction in reproductive success, risk of predation, and reduction of prey. Additionally, as the draft EIR states “removal of trees that contain large cavities and crevices, and modification of rock outcrops with large crevices, would reduce availability of roosting sites for males...”

The draft EIR states “the abandonment of the pallid bat maternity roost in the Cochrane Road barn, a substantial decline in the number of bats using the roost as a result of the Project, or the loss of multiple pallid bat individuals within an occupied roost (at any time of the year) would be a substantial adverse effect and therefore a significant impact under CEQA because this species’ populations and available habitat are limited locally

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and regionally.” Further, the draft EIR concludes that the impact to pallid bat is significant and unavoidable.

Recommendation: CDFW does not believe that the draft EIR includes all potentially feasible mitigation measures to avoid significant and unavoidable impacts of the Project on pallid bat. CDFW recommends the following mitigation measures to be included in the EIR to reduce impacts of the Project to less-than-significant levels:

Mitigation Measure #1: Survey Methodology Plan

Pallid bats use a variety of materials for roosting including tree hollows, rock crevices, mines, caves, and man-made structures. A qualified bat expert shall develop a survey methodology plan for CDFW review and approval. Historic and future survey data at this location shall be submitted to the California Natural Diversity Database (CNDDDB), <https://wildlife.ca.gov/Data/CNDDDB>, CDFW’s Report a Bat Colony page, <https://wildlife.ca.gov/Conservation/Mammals/Bats/Report-Colony>, and/or the North American Bat Monitoring Program, <https://www.nabatmonitoring.org/>. The survey plan shall include pre- and post-Project construction surveys to better understand the impacts of the Seismic Retrofit project on the colony. The qualified bat biologist shall review and consider survey protocols located at the North American Bat Monitoring Program’s Collect Data page, <https://www.nabatmonitoring.org/collect-data>.

Mitigation Measure #2: Mitigation and Monitoring Plan

A qualified bat biologist shall prepare a Bat Mitigation and Monitoring Plan and submit the plan to CDFW for review and approval. Please note that Fish and Game Code affords protection to all bats via Code Sections 2000, 3007, and 4150. The Bat Mitigation and Monitoring Plan shall include a measure describing the installation of wildlife exclusion, fencing, or other appropriate devices placed in the vicinity of the barn or other pallid bat roosting or maternity sites to avoid or reduce construction disturbance at these sites. The plan shall include noise reduction measures to be implemented near the Cochrane Road barn to the most extent possible and/or implement a sound disturbance buffer during the maternity season. The plan shall also state that a biological monitor shall be on-site during the Seismic Retrofit project to monitor for any signs of disturbance to the bat colony.

Mitigation Measure: #3: Habitat Assessment and Tree Removal Plan

At least six months prior to the start of Project construction and tree removal activities, a qualified bat biologist shall assess all trees within the construction area to determine if they contain suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures). If any trees contain such habitat, bat presence shall be presumed. Trees containing bat roosting habitat shall be removed using the method described below during the following seasonal periods of bat activity:

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Prior to maternity season – from approximately March 1 (or when night temperatures are above 45°F and when rains have ceased) through April 15 (when females begin to give birth to young); and prior to winter torpor – from September 1 (when young bats are self-sufficiently volant) until October 15 (before night temperatures fall below 45° F and rains begin):

On day one, in the afternoon and under the supervision of a qualified biologist, chainsaws shall only be used to remove tree limbs that do not contain suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures). The next day, the rest of the tree shall be removed.

If trees containing bat habitat cannot be removed during the above seasonal periods of bat activity, a qualified bat biologist shall survey the trees to determine if the tree contains a maternity colony or winter torpor bats. If the qualified biologist cannot make this determination with certainty, the presence of maternity colonies or winter torpor bats shall be assumed, and removal of the tree shall be delayed until the seasonal periods of bat activity specified above. If the biologist determines bats are present but a maternity colony or winter torpor bats are absent, then the tree may be removed outside of the above periods of seasonal bat activity using the above two-step tree removal process. If the qualified biologist determines that bats are absent, then the tree may be removed without bat seasonality or method restrictions.

Mitigation Measure #4: Compensatory Mitigation Plan

Additionally, the EIR shall include appropriate and feasible compensatory mitigation for any loss of bat habitat including any impacts to the maternity colony located in the barn as well as any other maternity, roosting, and/or hibernating habitat documented during bat protocol-level surveys. If the Project is expected to result in any loss of such bat habitat types, the mitigation and monitoring plan (Mitigation Measure #2 Mitigation and Monitoring Plan) shall include a biologically appropriate mitigation proposal to fully offset the loss of bat habitat.

Mitigation Measure #5: Light Intensity Limits

All light-emitting diode (LED)s or bulbs installed as a result of the Project shall be rated to emit or produce light at or under 2700 Kelvin that results in the output of a warm white color spectrum.

Mitigation Measure #6: Vehicle Light Barriers

Solid concrete barriers at a minimum height of 3.5 feet shall be installed in areas where they have the potential to reduce illumination from overhead lights and from vehicle lights into areas outside of the roadway. Barriers shall only be utilized as a light pollution minimization measure if they do not create a significant barrier to wildlife movement.

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Additional barrier types shall be employed when feasible, such as plastic inserts (privacy slats) into the spacing of cyclone fencing to create light barriers into areas outside the roadway.

Mitigation Measure #7: Reflective Signs and Road Striping

Retro-reflectivity of signs and road striping shall be implemented throughout Project construction to increase visibility of roads to drivers and reduce the need for electrical lighting. Reflective highway markers have also been proven effective to reduce raptor collisions on highways in California's Central Valley if installed along highway verges and medians.

Mitigation Measure #8: Light Poles and Illumination

All light poles or sources of illumination that will be newly installed or installations that will be replaced shall be installed with the appropriate shielding to avoid excessive light pollution into natural landscapes or aquatic habitat suitable for bat roosting or foraging within the Project corridor in coordination with CDFW. In addition, the light pole arm length and mast heights shall be modified to site-specific conditions to reduce excessive light spillage in the vicinity of the barn, and into natural landscapes and aquatic habitat within the Project area. In the vicinity of the barn, or areas with sensitive natural landscapes or aquatic habitat, the EIR shall analyze and determine if placing the light poles at non-standard intervals could further reduce excessive light pollution caused by decreasing the number of light output sources in sensitive areas.

COMMENT #6: Chapter 3, 3.5 Biological Resources – Wildlife and Terrestrial Resources, Impact TERR-1b: Crotch's bumble bee (*Bombus crotchii*)

Issue: The draft EIR states "during a survey of the reservoir bed on July 30, 2022, only one Crotch's bumble bee (*Bombus crotchii*) was seen among 300 or more bumble bees inspected closely, and therefore the number of individuals that could be impacted by Seismic Retrofit construction would be low."

The survey methodology used for Crotch's bumble bee, which is currently a candidate species for listing under CESA (CEQA Guidelines, §15380, subds. (c)(1)), does not follow appropriate Crotch's bumble bee survey protocol. Conducting one survey during mid-summer after most floral resources have bloomed and perished may have resulted in observing only one individual. If multiple surveys were conducted at various times of the floral season following an appropriate protocol, more individuals may have been observed. CDFW considers the survey results to be incomplete and therefore does not agree with the conclusion that the "number of individuals may be low" near the Seismic Retrofit.

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Similarly, under the Conservation Measures Construction section, the draft EIR states that Crotch's bumble bee is expected to have a low occurrence within the Ogier Ponds and Coyote Percolation Dam areas. However, no survey information or other references were included in this section to provide rationale for this conclusion.

Although the draft EIR includes various best management practices (BMPs), SCVHP conditions, and the milkweed survey plan (for Monarch butterfly and other pollinators) to help minimize impacts of the Project to Crotch's bumble bee, no mitigation measures are being proposed for this State Candidate Species.

Project activities, such as vegetation removal, grading or other ground disturbance 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: Crotch's bumble bee is being considered as a Covered Species under the SCVHP Amendment. As a co-permittee of the SCVHP, Valley Water could therefore receive take authorization for Crotch's bumble bee under CESA for the Project. Given that the amendment is only expected to be finalized by 2025, the EIR should clarify if Project activities expected to result in take of Crotch's bumble bee would be initiated prior to finalization of the SCVHP Amendment. If Project activities may commence prior to coverage under the SCVHP, the EIR should include measures to avoid take of Crotch's bumble bee or specify that Valley Water will obtain an Incidental Take Permit (ITP) prior to commencement of any Project-related construction activities in known or potentially occupied Crotch's bumble bee habitat.

CDFW recommends that the EIR include the mitigation measures described below:

Mitigation Measure #1: Habitat Assessment

A habitat assessment shall 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 shall 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 shall be conducted during the

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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 EIR and mitigation measures should be developed and included in the EIR to avoid or minimize impacts of the proposed Project to the Crotch's bumble bee and/or the species' habitats.

Mitigation Measure #2: Survey Plan

Surveys shall be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bee. The survey plan shall be submitted to CDFW for review and approval. If CESA candidate bumble bees will be captured or handled, surveyors shall obtain any necessary handling permits such as a 2081(a) Memorandum of Understanding from CDFW.

Surveys shall be conducted during the colony active period or gyne flight season (generally, April 1 to October 31). The survey shall 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 shall include all suitable habitat within each of the Project component areas and a surrounding 100-foot buffer area. The survey duration shall 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 nests sites each year, therefore, surveys shall 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>).

Mitigation Measure #3: On-site Bumble Bee Monitoring

A qualified biologist/monitor shall be on-site during all construction activities and that individual (in addition to their other qualifications to act in this role) shall be approved by CDFW for bumble bee monitoring. The biologist shall scan for bumble bees using floral resources, dewatered areas, or open water sources within the Project footprint. If bumble bees are observed after construction commences, construction shall be halted if bumble bees are in harm's way. For example, if an undetected nest is present in the construction area, it is assumed that bumble bees will become visible if the nest is disturbed, and construction shall be immediately halted.

If construction is halted because bumble bees are in harm's way, construction may only recommence after it has been established that the bees present are not Crotch's bumble bee. If Crotch's bumble bee are identified on the site, construction shall not

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recommence until CDFW provides further guidance, which may include an additional survey by a bumble bee expert, waiting until the colony active season ends, other actions such as establishment of appropriate buffers, or Valley Water obtaining take authorization if take cannot be completely avoided.

Mitigation Measure #4: Crotch's Bumble Bee Avoidance or Take Authorization

Crotch's bumble bee was detected during the July 2022 survey within the Seismic Retrofit project area; therefore, presence is assumed, and a Crotch's bumble bee avoidance plan shall be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal within that portion of the Project area. If Crotch's bumble bee are detected during pre-construction surveys within other areas of the Project, an avoidance plan shall also be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal in those areas.

If full take avoidance is not feasible, CDFW strongly recommends that the EIR state that Valley Water will apply to CDFW for take authorization under an ITP (pursuant to Fish and Game Code 2081(b)).

Mitigation Measure #5: Compensatory Mitigation for Impacts to Native Pollinator Species Habitat

Permanent and/or temporary loss of occupied or suitable nesting and/or foraging habitat for Crotch's bumble bee shall be mitigated with protection in perpetuity of the same type and quality (or higher quality) of habitat at a sufficient ratio to completely offset the loss. Other biologically effective and beneficial minimization measures shall be developed in consultation with CDFW. Mitigation lands shall be protected under a recorded conservation easement approved by CDFW, and an endowment shall be established to ensure long-term management of mitigation lands. Impacts to nesting and/or foraging habitat for other native pollinator species shall also be compensated through protection of the same type and quality of habitat.

COMMENT #7: Chapter 3, Section 3.5 Biological Resources – Wildlife and Terrestrial Resources, Impact TERR-1e: Bald Eagle (*Haliaeetus leucocephalus leucocephalus*) and Golden Eagle (*Aquila chrysaetos*)

Issue: The draft EIR states that the Seismic Retrofit construction will impact foraging habitat for bald eagles (*Haliaeetus leucocephalus leucocephalus*) and golden eagles (*Aquila chrysaetos*), which are known to nest near Anderson Reservoir. Some activities may potentially occur within the U.S. Fish and Wildlife Service's (USFWS) recommended buffers for these eagles, and the draft EIR states "construction activities could therefore cause the abandonment of an active nest with eggs or young, or a reduction in productivity (e.g., if disturbance reduces foraging time or efficiency and

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adults are not able to provide all of their young with food)” since Project activities will occur during the nesting season. Other Project activities such as the Conservation Measures may also impact either or both eagle species.

Recommendation: Bald and golden eagles are Fully Protected species in California. Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take per Fish and Game Code 3511. However, on July 10, 2023, State Bill 147 (https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB147) was passed. This bill provides the ability for CDFW to authorize take of a Fully Protected species. As the draft EIR states, Fully Protected species are known to occur with the Project area. If Project activities have the potential for take and measures to completely avoid take cannot be implemented, CDFW recommends that Valley Water request take authorization under an ITP (pursuant to Fish and Game Code 2081(b)).

COMMENT #8: Chapter 3, Section 3.5 Biological Resources – Wildlife and Terrestrial Resources, Impact TERR-1d: Western Pond Turtle (*Actinemys marmorata*)

Issue: Although western pond turtle (*Actinemys marmorata*) is a covered species under the SCVHP, the SCVHP may not cover all activities of the Project as previously stated in this letter, therefore additional mitigation measures may be required. The draft EIR states the Project component for the Coyote Percolation Dam “may improve the ability of pond turtles to move upstream over the percolation dam without having to exit the creek and risk predation during overland dispersal.” However, the draft EIR does not describe in detail modifications to the dam, or adjacent fish ladder, to ensure short-term and long-term movement of this species through the facility.

Recommendation: CDFW recommends that for Phase 2 Coyote Percolation Dam, the EIR include additional information on specific modifications that will be incorporated in the design to benefit passage for western pond turtle.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs be 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 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>.

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The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist Valley Water in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Mayra Molina, Senior Environmental Scientist (Specialist), at (707) 428-2067 or Mayra.Molina@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:
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