State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

October 15, 2021

Ryan Heacock
Operations and Maintenance Environmental Support Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118
fahce@valleywater.org

Subject: Fish and Aquatic Habitat Collaborative Effort, Draft Program Environmental Impact Report, SCH No. 2015022008, Guadalupe River and Stevens Creek Watersheds in Santa Clara County, California

Dear Ryan Heacock:

The California Department of Fish and Wildlife (CDFW) received a Program Draft Environmental Impact Report (Draft EIR) from the Santa Clara Valley Water District (Valley Water) for the Fish and Aquatic Habitat Collaborative Effort (FAHCE) (Project) on July 12, 2021 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). On July 29, 2021, Valley Water provided an extension to submit comments on the Project by October 15, 2021.

Thank you for the opportunity to provide comments and recommendations regarding those activities included in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish & G. Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 & 15204).

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the 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 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Santa Clara Valley Water District (Valley Water)

Location: The Project area includes portions of the Stevens Creek and Guadalupe River watersheds within Santa Clara County, CA and includes mainstem tributaries and Valley Water water supply facilities where Valley Water holds corresponding water rights licenses. The Project area extends from the Valley Water reservoirs and dams to the tidally influenced areas of Stevens Creek and Guadalupe River. The Project excludes the tidally influenced areas; thus, the Project area is smaller than the entire Stevens Creek and Guadalupe River watersheds.

Objective: The proposed Project plans to implement a Fish Habitat Restoration Plan (FHRP) and includes restoration measures specified in the initialed 2003 Settlement Agreement Regarding Water Rights of the Santa Clara Valley Water District on Coyote, Guadalupe, and Stevens Creeks (Settlement Agreement) intended to resolve a water rights complaint filed with the State Water Resources Control Board. In 2019, however, Valley Water decided to move CEQA review of the Coyote Creek watershed Phase 1 FAHCE measures to the future Anderson Dam Seismic Retrofit Project (ADSRP) EIR. The FHRP includes both flow measures (reservoir re-operation rule curves) and non-flow measures such as fish barrier remediation, and measures to increase spawning and rearing habitat for steelhead (*Oncorhynchus mykiss*) and Chinook salmon (*Oncorhynchus tshawytscha*).

Valley Water developed the FHRP to detail the implementation plan for certain provisions outlined in the Settlement Agreement. As defined in the Settlement Agreement, FHRP implementation includes up to four phases. Phase 1 consists of implementing measures included in the FHRP specific to reservoir re-operation rule curves and facility improvements necessary to support fish passage, spawning and rearing habitat, and hydrologic enhancements. Phase 1 would be implemented over a 10-year term. Upon the expiration of the initial 10-year period, Valley Water would evaluate monitoring data to determine whether objectives are being met. If program objectives are not being met, Valley Water would implement Phase 2 for a 10-year period, potentially followed by Phase 3. If during any 10-year program evaluation Valley Water determines that program objectives are being met, they would transition to Phase 4. Phase 4 would be a continued implementation of the preceding phase where

program objectives are being met. No new actions would be implemented under Phase 4 not contemplated in Phases 1, 2, and 3.

The following is a summary of the objectives of the proposed Project:

- **Objective 1**: Restore and maintain a healthy steelhead population in the Stevens Creek watershed by providing suitable spawning and rearing habitat, adequate passage for upmigrating adults and outmigrating juvenile steelhead, and extended distribution of suitable habitat in Phases 2 and 3 as determined through the adaptive management program (AMP);

- **Objective 2**: Restore and maintain healthy steelhead and Chinook salmon populations in the Guadalupe River 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 AMP; and

- **Objective 3**: Maintain flexible and reliable groundwater recharge to support current and future water supply and water deliveries in a practical, cost-effective, and environmentally sensitive manner so that sufficient water is available for any present or future beneficial use.

COMMENTS AND RECOMMENDATIONS

CDFW provides 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. Editorial comments or other suggestions are also included to improve the document.

General Comments

The CEQA Guidelines (§§15124 & 15378) require that the Draft EIR incorporate a full project description, including reasonably foreseeable future phases of the project, and contains sufficient information to evaluate and review the project's environmental impact.

Draft EIR Length and Organization

Issue: Due to the length of the Draft EIR (900-plus pages) and its 17 appendices (full document totaling over 3,000 pages), CDFW staff (and we expect other reviewing agencies and members of the public) had great difficulty finding relevant information that should have been more clearly summarized and organized in the CEQA document. Finding the information needed to fully understand and evaluate various components of the proposed Project often required toggling back and forth between sections of the main document as well as multiple appendices. Per CEQA guidelines (§15140), EIRs

must be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents. Furthermore, the text of draft EIRs should normally be less than 150 pages and proposals of unusual scope or complexity should normally be less than 300 pages (CEQA guidelines §15141). CDFW believes that appendices should be supplemental for those reviewers who are looking for more in-depth technical details, but they should not be absolutely necessary to understand and evaluate the basics of the proposed Project.

Recommendation: CDFW recommends that the majority of the impacts analysis and overall results be located in the main Draft EIR document rather than in one or multiple appendices in order for reviewers to more efficiently and fully understand all potential impacts, results, and necessary mitigation measures needed to offset impacts. If the main EIR document refers to information contained in one or more appendices, each appendix label or name with corresponding page number(s) should be inserted in the main EIR document (or possibly even hyperlinked directly to the appendix). Language such as "[A]gain, as detailed in Appendix E of the Settlement Agreement (included in Appendix A Settlement Agreement, Appendix E Reservoir Reoperation Rule Curves)" is an example of the difficulty in efficiently following the document and locating important information for our review. Also, we recommend that the Table of Contents in the larger documents be hyperlinked to allow quick access to specific sections of the EIR document.

Monitoring

Issue: Section 1.2.4 of the Draft EIR, states that "[u]pon the expiration of the 10-year period, Valley Water would evaluate monitoring data to determine whether objectives are being met." CDFW believes that 10 years is too long to wait to evaluate whether objectives are being met and does not allow for timely implementation of necessary adaptive management actions. Monitoring data for the Project should therefore not only be evaluated at the end of the 10-year phase but throughout the phase.

Recommendation: CDFW recommends the EIR include language stating annual reports, technical evaluations, and updates associated with the proposed Project will be brought regularly to the Technical Work Group, Adaptive Management Team, and Initialing Parties to the Settlement Agreement as meeting agenda items. Monitoring and adaptive management actions to assess the success of the Project should be regularly evaluated throughout the 10-year phase. The goal of the adaptive management should be to assess how well the Project is working in real time, and identify and correct any problems encountered as soon as feasible.

Technical Analysis

Issue: The presentation of the technical analysis in the Draft EIR is vague making it challenging to understand and evaluate how the objectives of the proposed Project will

be achieved. The analysis is largely based on averages and does not highlight the various conditions that could occur for each of the Project alternatives. These average values and general findings do not provide the level of analysis and detail needed to understand how the proposed flows and temperatures will affect steelhead (and other species) for each of the Project alternatives.

Recommendations: CDFW recommends the analysis be summarized to clearly show the expected conditions and focus on the impacts for steelhead, Chinook salmon, their habitat, and other species. Showing an increase or decrease as a percentage change (habitat change) does not directly relate to benefits or impacts, so other details and data need to be explained. The model results themselves (and not just an interpretation of them) should be included in the EIR including information on how the quality of the habitat is being improved.

Furthermore, a clear and concise summary of the analysis to determine the effectiveness of the proposed Project (FAHCE) and the FAHCE-plus Alternative's ability to improve habitat is lacking. While information discussing the analysis of the potential effectiveness of each rule curve scenario to improve habitat may be located in the appendices, it should be clearly summarized in the main EIR document. The Draft EIR document repeatedly states that, overall, the FAHCE-plus Alternative flow measures provide greater benefits than the FAHCE flow measures but does not explain how this conclusion was drawn. The document describes how the analysis was conducted but does not clearly summarize the results of that analysis. CDFW recommends a summary of the analysis be included in the Chapter 2 (Project Description) and Chapter 4 (Alternatives) sections of the EIR. Figures, graphs, tables etc. comparing the analysis between the different alternatives should also be provided.

Within Section 1.4 of the Executive Summary, the Draft EIR described the four alternatives that were considered but lacks information on the process of how alternatives were selected and whether Valley Water considered other alternatives. For instance, the development of the Water Evaluation And Planning (WEAP) model included different scenarios, but the Draft EIR did not include them as alternatives nor provide a description of the selection process. The Draft EIR should have addressed all alternatives that were considered and why some were not selected for further analysis. Similarly, Table ES-4 compares the Project with the four alternatives, but the table lacks adequate information, and the benefits or disadvantages of each alternative are unclear. The EIR should include more in-depth comparisons of the alternatives against the proposed Project.

Upon reviewing metrics such as the number of fish passage days between the proposed Project (FAHCE) and the FAHCE-plus Alternative, there is very little improvement shown from FAHCE to FAHCE-plus in both the 2015 and 2035 scenarios. In some cases, the FAHCE scenario provides more fish passage days than FAHCE-plus. When reviewing these data, it is difficult to determine how the conclusion that FAHCE-plus is the superior

alternative was drawn. Appendix K contains information on habitat assessment and shows comparisons of the analysis on habitat improvements anticipated based on the WEAP model outputs versus Baseline conditions for the FAHCE and FAHCE-plus scenarios; however, the information is still not clearly presented and therefore difficult for CDFW to evaluate. Figures and tables in Appendix K Section 1.5.1 (*Assessment of Steelhead, Steelhead Habitat, and Migration Conditions in the Stevens Creek Watershed*) do not clearly communicate the comparison between Baseline conditions and proposed Project conditions. The vertical table on pages 40 and 41 of Appendix K stacking the different conditions and then summarizing them is an example of a poor presentation of these data. CDFW recommends including a table showing a side-by-side comparison of baseline conditions next to proposed Project conditions for each reach; this would greatly assist the reviewer's ability to understand the proposed Project impacts. Additionally, CDFW recommends a concise summary of all the anticipated habitat improvements for both watersheds for the proposed Project and all alternatives should be included in the main EIR document rather than in an appendix.

The analysis also fails to answer the critical question "How does this Project (or alternative), maintain steelhead and Chinook in good condition now and into the future?" The CEQA analysis should show the expected conditions and focus on the impacts to these species and their habitat. The model results and not just an interpretation of them should be included in the EIR. CDFW recommends Chapters 3 (Environmental Setting and Impact Analysis) and Chapter 4 (Alternatives) of the Draft EIR include graphs, maps, tables, etc. to explain and show the comparative analysis. These graphics should show baseline conditions and future conditions for the proposed Project and each of the alternatives. Graphs showing the following information (similar to those recently presented by Valley Water on September 22, 2021 at the Pacheco Expansion Project Operations Workshop #8) would be helpful:

- Graphs of flow data (y) plotted against creek miles (Points of Interest/) (x),
- Temperature data by month (y) plotted against creek miles (Points of Interest) (x),
- Depth/Habitat Suitability (y) plotted against creek miles (Points of Interest) (x)

Monthly and seasonal averages of temperature data are not conducive for evaluating temperature impacts. Minimum and maximum temperatures are also needed. Evaluating specific water year types is important as it impacts the habitat and amount of water in the system. CDFW recommends including a clear summary of data showing summer rearing conditions for steelhead for each scenario. This should include a current/baseline/no project flows and rule curve to comparatively evaluate the proposed Project and alternatives in a straight-forward comparison between the Project and the environmentally superior alternative (FAHCE vs. FAHCE-plus) showing why FAHCE-plus is better at maintaining fish in good condition than the proposed Project, not just a

comparison to baseline conditions. Finally, the Draft EIR documents switch between the use of Fahrenheit and Celsius for temperature data. One unit should be selected and used consistently.

Timeframe of Project Components

Issue: Section 2.4.1.2 of the Draft EIR states "[D]am safety operations restrictions were placed by DSOD (Division of Safety of Dams) on Almaden, Calero, and Guadalupe Reservoirs that reduce reservoir storage capacities until identified safety concerns specific to each dam have been addressed. This further means that since flow releases associated with the re-operation rule curves at these reservoirs would not occur until DSOD operational restrictions are lifted." CDFW is concerned that these restrictions would restrict full implementation of flow measures required for the proposed Project until safety retrofits are completed. A table or outline of the plan for when various project components (including nonflow measures) will occur is not included in the Draft EIR. Such a schedule is absolutely necessary to understand the timing of full implementation of the flow releases in both watersheds as well as the order in which non-flow measures will be implemented. In addition to the Draft EIR not describing when retrofit and non-flow projects are expected to start, it also does not indicate when the EIRs for those individual projects are expected to be completed. Since the full implementation of the proposed Project cannot happen until these other projects are completed, the EIR must include a clear summary of the plan for all projects that still need to be completed before the proposed Project's reservoir rule curves can be fully implemented. In some cases, these projects are several years away from being completed and it is difficult to evaluate the cumulative effects of the proposed Project without understanding the plan for getting all three reservoirs into compliance with the DSOD requirements. Ideally, these projects would be prioritized in a way that achieves the greatest potential habitat benefit in the shortest timeframe. The EIR should therefore include a description of how these retrofit projects will be prioritized and executed.

Additionally, while the Anderson Dam Seismic Retrofit Project (ADSRP) has been removed from this Draft EIR and is not considered as part of the proposed Project, the ADSRP will likely have impacts on the timing and implementation of the proposed Project. It is not expected that the details of the ADSRP would be addressed in the current FAHCE EIR, but the FAHCE EIR should discuss how the construction timeframe for the ADSRP will impact Valley Water's operations over the next several years and how this might affect the timing of other seismic retrofit projects in the proposed Project area and implementation of the FAHCE rule curves and non-flow measures.

Recommendations: CDFW recommends including a table in the EIR showing a list of all individual Project components that need to be completed in order to fully implement the overall proposed Project. This would include a rough timeline and/or the chronology for when all the individual components will be executed. Given that many of these

components will take several years to complete (each seismic retrofit could take 8-10 years) and will each have to go through their own environmental review process, each of these project components should have their own approximate schedules and summaries that address the following:

- The scope of permits and environmental review for each project, and the expected timeline for completion of each project should be provided. If projects are in progress their status and expected completion date should be included;

- An explanation for how each project is connected and prioritized for completion should be provided. For example, the Anderson Dam reservoir is proposed to be offline for 10 years. Given this expectation, an explanation of how the other projects will be staggered to accommodate the impacts to water supply and habitat should be provided in the EIR;

- The rationale for how projects will be prioritized is not provided and should be included;

- An explanation of how the retrofit projects will be incorporated into the different "Phases" and which ones will realistically be completed in "Phase 1" should be provided;

- It is unclear what projects can be implemented upon finalization of this EIR and which projects will require their own separate environmental review process. Clarification should be provided;

- It is unclear if the future baseline of 2035 for completion of the retrofits is still accurate given the potential extended timeframe of these projects. If a 2035 baseline is appropriate, then this should be validated.

Settlement Agreement Budget

Issue: The 2003 Settlement Agreement specified a maximum of $42 million will be made available by Valley Water in each of the Phases 1, 2 and 3 in accordance with the agreed-upon cost accounting methodology. However, the estimated budget for implementation of all measures contained in Phase 1 (Appendix C of the Settlement Agreement) is based on 2003 dollar amounts and likely well below costs needed for implementation of the restoration projects, adaptive management, and other measures today or into the future.

Recommendation: CDFW recommends the cost accounting methodology (Appendix D of the Settlement Agreement) be re-evaluated and the proposed budget for

implementation of the phases under FAHCE be adjusted for inflation for the expected foreseeable implementation timeframe for each of the three phases of the Project.

Executive Summary

Issue: Due to the great length of the Draft EIR and its appendices, it is imperative that readers be able to rely on the Executive Summary for an overall understanding of the proposed Project, feasible alternatives, impacts on resources and mitigation measures.

Recommendation: CDFW recommends the Executive Summary provide an overall but brief understanding of the Project, the proposed actions and its consequences, and identify each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect (Pub. Resources Code, §§21083 and 21061; CEQA Guidelines §15123). Per CEQA guidelines, the summary should also normally not exceed 15 pages. Also, the Map on page ES-5 should be labeled with names of creeks referenced in this Draft EIR (and Points of Interests if possible).

Chapter 2, Project Description; Chapter 3, Environmental Setting and Impact Analysis

Proposed Project Area

Issue: The Draft EIR, under Chapter 2.2, states that "[T]he Project area is defined to be the reservoirs, creeks, and rivers where the Proposed Project would be implemented, together with immediately adjacent areas. In the Stevens Creek watershed, all Proposed Project activities would occur within Stevens Creek at or below Stevens Creek Reservoir. In the Guadalupe River watershed, all Proposed Project activities would occur in Alamitos, Calero, Guadalupe, and Los Gatos Creeks, and the Guadalupe River, at or below their five respective reservoirs." It is unclear whether or not the reservoirs themselves are included in the Project area as it is first stated that it includes the 'reservoirs, creeks, and rivers', but then states that all activities would occur 'at or below' the reservoirs. Throughout most of the Draft EIR, only downstream of the reservoirs is considered in the Project area but in some sections (i.e., 'Beneficial Uses') fish in the reservoirs are included.

Similarly, in Chapter 3.8, the study area is not clearly described and Appendix P (*Terrestrial Biological Resources Technical Memorandum*) describes the study area as including the basins of the two watersheds but that the terrestrial biological analysis is limited to specific streams and adjacent habitat. Neither the main text or Appendix P included figures showing the study area or the habitat types and potential species that could occur.

Recommendation: The Settlement Agreement includes management objectives involving expanding suitable habitat for steelhead and Chinook salmon into tributaries or

above a reservoir (e.g., Section 6.5.1.3 of the Settlement Agreement for Stevens Creek). The Settlement Agreement also includes undertaking a feasibility study of trap-and-truck operations at reservoirs for upstream and downstream migration of steelhead (e.g., Section 6.5.2.5) and eliminating the warming of water temperature in the Almaden Reservoir (Section 6.6.2.1.3.3(A)). Furthermore, since the reservoirs themselves are the source of flow releases associated with the proposed Project, it would be reasonable to include them within the Project area. CDFW recommends figures such as a study area or similar be included in the EIR in order to understand what areas were analyzed for potential impacts from the Project. Overall, there should be a consistent description of the Project area throughout the EIR.

Exclusion of Tidally Influenced Areas

Issue: The Draft EIR states that the Project does not include tidally influenced and estuarine reaches, and that the alternatives would not substantially affect aquatic habitat conditions. It is unclear how this conclusion was made and what analysis was conducted to assess potential impacts.

Recommendation: CDFW recommends the EIR provide additional justification for excluding the tidally influenced portions of the creeks within the proposed Project area. We also recommend that these areas be included in the analysis for impacts to biological resources, especially considering that these watersheds are contaminated with mercury, polychlorinated biphenyls (PCB), and/or other pollutants. Monitoring of these pollutants should be included as part of the Adaptive Management Program monitoring effort.

Pipeline and Tributaries

Issue: The Draft EIR includes figures of the Stevens Creek and Guadalupe River Watersheds (Figures 2.2-1 and 2.2-2), and within these figures some pipelines are labeled, but minimal or no information is provided on these pipelines. It is unclear if pipelines are a component of the proposed Project, and whether they may influence flows or water quality. Additionally, for Guadalupe River, other tributaries connect with the river and minimal information is provided about these watercourses. For example, the Draft EIR states that Ross and Canoas Creeks are “trapezoidal channels with earthen and concrete sections throughout that do not provide fish habitat,” but considering that these creeks connect to Guadalupe River and are designed to move flows out of the creeks, they could have the potential to affect the flow measures required for the proposed Project.

Recommendation: CDFW recommends the EIR include detailed information on how the pipelines and tributaries interact with the main streams. Information such as whether discharge from the pipeline may potentially affect the flow measures should be included

as well as an evaluation of whether tributaries may impact water quality or other biological resources.

Project "Phases"

Issue: The EIR should provide a better understanding of how the different "phases" of the Project will be implemented. The Draft EIR states "If program objectives are not being met, Valley Water would implement Phase 2 for a 10-year period, potentially followed by Phase 3. If during the 10-year program evaluation Valley Water determines that program objectives are being met, they would transition to Phase 4".

In order to evaluate whether objectives of the proposed Project will be met, a better understanding of the timeframe of Phase 1 implementation and completion is needed. Without the previously recommended timeline for the various Project components described in the letter above, it is unclear if Valley Water could be reasonably expected to fully implement the proposed Project by the end of Phase 1. If that is the case, it is unclear if Phase 2 would be a continuation of implementing the proposed Project or alternative, or if Phase 2 would be the evaluation of the effectiveness of this implementation. The EIR should be clear on which Phase the proposed Project is expected to be fully implemented and be evaluated for effectiveness.

The Draft EIR states that the "Settlement Agreement presents menus of potential Additional Measures for Phase 2…" but these are not included in the main body of the Draft EIR nor examples were provided. The Draft EIR does not clearly describe the criteria or other measures that may be included in the multiple phases.

Recommendation: CDFW recommends the EIR include a section that more clearly describes the criteria and/or measures included in each of the different phases, a timeline for when the different phases will be executed, and clearly indicate how effective monitoring will be implemented.

Passage Improvements and Reservoir Operation Modifications

Issue: In Section 2.2.4 D 'Fish Passage Improvements' (and in other sections, including Appendix A, Table 1-1) the document states "Ten of the eighteen Valley Water priority fish passage barriers identified in the Settlement Agreement have been remediated (and, as a result, are not included in proposed Project measures to be implemented)". The Draft EIR does not clarify if and when it was agreed that these projects were assessed as complete by the Initialing Parties (IP) to the Settlement Agreement.

Recommendation: CDFW recommends the EIR include the following recommendations:

- The draft EIR should describe when and if the Project measures were agreed to by the IP as "complete";

- Lack of discussion on the monitoring on each of the "complete" projects to ensure they are functioning properly. Additional information should be provided;

- Lack of discussion on the operation and maintenance for non-flow projects that are deemed "complete" and how to ensure they continue to function properly should be addressed. For example, CDFW and other resource agencies do not consider the Evelyn Fish Ladder as currently functioning properly; however, the Draft EIR considered it "complete". The EIR should contemplate what is needed to fix this ladder;

- There is no discussion on how FAHCE funding will be debited towards "complete" items or if FAHCE funding would not be used. Additional information should be provided.

Issue: Additionally, in Section 2.2.4 – A, the Draft EIR lists various modifications that have been made to groundwater recharge and reservoir operations but does not provide information on how these modifications benefited aquatic species or other biological resources. The Draft EIR should discuss if studies were conducted that show how these modifications have improved conditions for biological resources.

Recommendation: CDFW recommends the EIR clearly explain how modifications to reservoir operations have created healthier conditions for biological resources. If studies were conducted to evaluate before and after conditions, they should be included and summarized in the EIR.

Phase 1 Measures and Adaptive Management Program

Issues: There are multiple instances in the Project Description where information is insufficient or unclear. For example, Table 2.4-1 compares the reservoirs for both watersheds, but Stevens, Lexington, and Vasona reservoirs are not adequately described; the table and description for the table does not state why capacities or restrictions are unknown for those three facilities. Another example is Footnote 4, which states "Rule curves for the Almaden-Calero and Vasona Reservoirs were not identified in the Settlement Agreement and are therefore, not part of the Proposed Project." However, the WEAP model includes these reservoirs and the Draft EIR includes Figures 2.4-3 and 2.4-4, which show the rule curves for these reservoirs. Therefore, the footnote appears contradictory. In Section 2.8 Proposed Project Implementation Schedule, the Draft EIR states that pilot flow measures in Guadalupe and Stevens creeks were initiated. Considering the drought year we are experiencing (2020/2021), additional information should be included on what flows were implemented and any other information associated with this pilot study.

In Section 2.4.3.3 the Draft EIR states that a geomorphic functions study will be developed, and the minimum goal will be to implement one or more projects within a minimum of 2,000 linear feet of the Guadalupe River channel. It is unclear how it is known that at least 2,000 linear feet of the channel will be enhanced without the study being complete at this time. There is also mention that a similar study was implemented for Stevens Creek in 2009, but no additional information was provided in the Draft EIR. For the Stevens Creek study, it is unclear if this study was conducted as part of the Settlement Agreement or as an independent project.

Table 2.5-1. Summary of Phase 1 Measures and Anticipated Physical Changes, repeatedly states that a potential physical change from Phase 1 measures would be a short-term disturbance to riparian habitat, but this statement should consider that removal of tree species such as oaks would be a long-term (permanent) impact due to their slow growth rates. Although Phase 1 measures are geared towards enhancing/restoring conditions for salmonids, the Draft EIR does not include improvements for other native aquatic species. For the trap-and-truck study, the table states that there would be no physical changes. Adverse biological impacts do not appear to be considered for this Project; for example, spreading or moving pathogens/diseases during transport of salmonids can be a significant negative impact to native amphibians and reptiles and should be evaluated.

In Section 2.6, the Draft EIR states that flow and non-flow measures will be monitored and assessed to see whether measurable objectives (which are unknown or not included in the Draft EIR) are met. It is unclear what specific habitat conditions and/or species surveys (both wildlife and plants) will be monitored and conducted, and whether monitoring efforts would provide information that shows that the Project (flow measures and non-flow measures) are resulting in better conditions for biological resources.

Recommendations: CDFW recommends the EIR include clear and concise information in Sections 2.4, 2.5, 2.6, and 2.8. Table 2.4-1 should include a description of each reservoir and the missing information for Stevens, Lexington, and Vasona reservoirs. Clarification for Footnote 4 should be provided or removed if the statement is no longer valid. Projects that have been implemented as part of the Settlement Agreement should be addressed further in the EIR (e.g., pilot flows initiated in October 2020). For the Guadalupe River geomorphic functions study, more context should be given for criteria that are known at this time and will be included in the study. If projects such as the Stevens Creek 2009 geomorphic functions study is referenced, additional information should be included in the EIR to understand how and if it is connected to the Project. Results of that study should be included as supplemental information in the EIR.

For Table 2.5-1, CDFW recommends Valley Water include habitat improvements for other species beyond salmonids. For example, installing basking sites or creating nesting habitat for Western pond turtle (*Emys marmorata*; State Species of Special

Concern), since this species and others utilize the same habitat. Valley Water should also include a protocol for testing and/or preventing the spread of pathogens and diseases for the trap-and-truck study. Impacts to riparian habitat should be reevaluated and if there is potential for removal of slow growing species, such as oaks (*Quercus* spp), this should be stated as a permanent impact.

Additionally, CDFW recommends the Adaptive Management Program, of which monitoring is a key component, be more specific on which resource of species metrics/parameters will be monitored, the criteria that will be evaluated, and how these criteria will inform the Adaptive Management Team on whether the Project is supporting a healthy salmonid population and suitable habitat for other biological resources.

Terrestrial Biological Resources

Special-Status Plants

Issue: The Draft EIR states that there are potentially 40 special-status plant species within the Project area. Some of the Best Management Practices (BMPs) included and related to special status plants address avoidance and protection but measures are not included in the event that take or damage to sensitive plant species cannot be completely avoided.

Recommendation: CDFW recommends the EIR include a measure stating that a plant salvage plan will be developed if special-status plant species are found within the Project area and may be impacted due to flow and non-flow measures. Additionally, since the current analysis does not include tidally influenced areas, the EIR should expand its impact analysis to include special-status plant species or other biological resources that could potentially be impacted by Project activities in estuarine and marsh habitats.

Special-Status Wildlife Species

Issue: In Section 3.8.1.4, the Draft EIR discusses why certain species were not considered to be impacted by the Project. One of the reasons states that if the species was not described in the Santa Clara Valley Habitat Plan (VHP) as potentially occurring in the study area, then it would not be considered further in the Draft EIR. However, the VHP coverage area does not include the Stevens Creek Watershed and parts of the Guadalupe River Watershed; therefore, it is unclear if the impact assessment is related to the VHP coverage area or the entire Project area.

Recommendation: CDFW recommends that Valley Water clarify the geographic scope in the Draft EIR of the impacts analysis to species and natural communities. At issue is whether known or potential impacts to biological resources were analyzed in relation to the entire Project area or the VHP coverage area. The EIR should clarify and refine the

coverage of the Project under the VHP; therefore, additional impact analyses to biological resources may need to be conducted to cover the entire scope of the Project area.

Invasive Species

Issue: The Draft EIR mentions some invasives species that are currently known to occur within the Project area. For example, New Zealand mudsnails are present in Guadalupe River, Guadalupe Creek, Alamitos Creek, and Stevens Creek. Some of the BMPs included may help to prevent further spread of invasive species (e.g., GEN-31 Vehicle Cleaning, VEG-2 Non-native Invasive Plant Removal, etc.) but were not specific to invasive wildlife and were mostly related to invasive plants.

Recommendation: CDFW recommends the EIR include measures, plans, or studies to prevent or control the spread of invasives wildlife species like the New Zealand mudsnail. For example, the *National Management and Control Plan for the New Zealand Mudsnail*[1] may be a useful resource. If the goal of the Project is to improve habitat for salmonids, addressing invasive wildlife species should be considered.

Mitigation and Other Species Impacts

Issue: The Draft EIR states that impacts would be mitigated by paying impact fees to the VHP, but it does not clearly address that the Project area is not fully covered under the VHP coverage area (as previously discussed in this letter). Wetland impacts are expected to be mitigated at a 1:1 ratio, however, extent of wetland impacts are not clearly described.

Recommendation: As previously recommended in this letter, the EIR should be clear on the portions of the Project area that are covered under the VHP. CDFW recommends additional mitigation measures be included to address impacts outside of the VHP coverage area. The EIR should address a mitigation ratio greater than 1:1 if the wetland habitat does not recover within a year and impacts are considered semi-permanent or permanent.

Issue: Within Section 3.8.4.1, the *Flow Measures Impact Analysis* includes information on how the 2015 proposed Project flows in Calero Creek would exceed the channel capacity on four additional days compared with the current baseline condition. It goes on to state that on those four days, channel capacity would only be exceeded by 31 cubic feet per second (cfs) and this would not be considered substantial. The same section also includes a statement that the 2035 proposed Project would have three fewer days where flows in Calero Creek would exceed channel capacity. The Draft EIR does not justify how this would not be a significant impact to biological resources.

[1] https://www.fws.gov/anstaskforce/Documents/NZMS_MgmtControl_Final.pdf

Recommendation: CDFW recommends the EIR elaborate on these statements and provide additional information to understand how flows may exceed channel capacity under certain conditions and would not be a substantial impact to native plants or wildlife. The Draft EIR states that there are special-status plants such as *Dirca occidentalis* within the Project area and therefore impacts due to flows should be reevaluated. Other potential impacts the EIR should analyze is whether these flows would cause take of nesting Western pond turtle or San Francisco dusky-footed woodrat (*Neotoma fuscipes*), which are both State Species of Special Concern.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a California Endangered Species Act (CESA) Permit must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project and if the species are not within the VHP coverage area. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit. For more information on CESA and the ITP application process, please visit our website at: http://www.wildlife.ca.gov/Conservation/CESA.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA §§ 21001(c), 21083, & CEQA Guidelines §§ 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code § 2080.

Lake and Streambed Alteration Agreement

CDFW will require a Lake and Streambed Alteration (LSA) Agreement, pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities (flow and non-flow measures) in the Guadalupe River and Stevens Creek watersheds and any other waters within the proposed Project area subject to 1600 et seq. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the EIR for the Project. CDFW may not execute the

final LSA Agreement until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the responsible agency.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

CDFW considers this Project to have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, section 711.4; Pub. Resources Code, section 21089). 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

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, CDFW appreciates 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 the Fish and Game Code.

However, as described in this letter, CDFW is greatly concerned with the adequacy of the Draft EIR to fully, yet succinctly, describe the Project and its objectives, and adequately present the technical analysis required to evaluate the Project's significant, or potentially significant impacts on biological resources. Deficiencies in the CEQA document can later affect CDFW's permitting of the Project in its role as Responsible Agency. In addition, because of these issues, CDFW has concerns that Valley Water may not have the basis to approve the Project to make "findings" as required by CEQA unless the document is modified to address the issues raised by CDFW. CDFW therefore recommends Valley Water work with CDFW and other resource agencies in correcting the deficiencies identified, and in preparing a revised and recirculated Draft EIR prior to certification.

If you have any questions regarding this letter or for further coordination with CDFW, please contact either Jessie Maxfield, Water Rights Coordinator, at Jessica.Maxfield@wildlife.ca.gov; Brenda Blinn, Senior Environmental Scientist (Supervisory), at Brenda.Blinn@wildlife.ca.gov; or Craig Weightman, Environmental Program Manager, at Craig.Weightman@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Stephanie Fong
CF047D7F8D234E1...

Stephanie Fong
Acting Regional Manager
Bay Delta Region

ec:

Office of Planning and Research, State Clearinghouse, SCH No. 2015022008

CDFW Bay Delta Region
Mayra Molina, Mayra.Molina@wildlife.ca.gov
Emily Jacinto, Emily.Jacinto@wildlife.ca.gov
Julie Coombes, Julie.Coombes@wildlife.ca.gov
Ryan Watanabe, Ryan.Watanabe@wildlife.ca.gov
Manfred Kittel, Manfred.Kittel@wildlife.ca.gov

NOAA Fisheries
Gary Stern, Gary.Stern@noaa.gov
Darren Howe, Darren.Howe@noaa.gov
Nicholas VanFleet, Nicholas.VanFleet@noaa.gov
Dereka Chargualaf, Dereka.Chargualaf@noaa.gov

U.S. Fish and Wildlife Service
Joseph Terry, Joseph_Terry@fws.gov

San Francisco Bay Regional Water Quality Control Board
Susan Glendening, Susan.Glendening@waterboards.ca.gov

State Water Resources Control Board, Division of Water Rights
Scott McFarland, Scott.McFarland@waterboards.ca.gov

U.S. Army Corps of Engineers
Katerina Galacatos, Katerina.Galacatos@usace.army.mil
Keith Hess, Keith.D.Hess@usace.army.mil

REFERENCES

Thorne, James H., Joseph Wraithwall, Guido Franco. 2018. California's Changing Climate 2018. California's Fourth Climate Change Assessment, California Natural Resources Agency