



San Francisco Bay Regional Water Quality Control Board

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September 17, 2025

Santa Clara Valley Water District
Attn: Billy Williams (bwilliams@valleywater.org)
5750 Almaden Expressway
San Jose, CA 95118

Subject: Comments on Draft Subsequent Environmental Impact Report for Stream Maintenance Program (State Clearinghouse No. 2000102055), Santa Clara County

Dear Billy Williams:

San Francisco Bay Water Quality Control Board (Water Board) staff have reviewed the Santa Clara Valley Water District's (Valley Water's) draft subsequent environmental impact report (SEIR) for Valley Water's Stream Maintenance Program (SMP). Valley Water has prepared the SEIR pursuant to the California Environmental Quality Act (CEQA) (SCH No. 2000102055). The SEIR is intended to be the basis of the next 10-year SMP cycle (SMP-3) planned to begin in January 2027.

With the proposed changes to the SMP, Valley Water would need to apply for a Clean Water Act section 401 water quality certification (Certification). This would be the basis for us to update and reissue the existing SMP authorization under Order No. R2-2020-0017. This letter provides feedback about the draft SEIR to facilitate Valley Water's completion of the final SEIR and to inform the development of an application for Certification.

In general, we endorse the broad changes to mitigation proposed for SMP-3 which include developing reach-scale or multi-benefit projects. However, we have some reservations about some of the details proposed in the SEIR because they could result in SMP activities being done without appropriate notifications, tracking, or mitigation, as summarized in our comments below. The SMP manual (Manual), which is included as Attachment A to the SEIR, incorporates details for SMP implementation. The revised Manual for SMP-3 has many new elements that are more detailed than the SEIR, so we plan to provide additional comments on the Manual later (though we have toggled between the SIER and Manual to some extent to develop the following comments).

ALEXIS STRAUSS HACKER, CHAIR | EILEEN M. WHITE, EXECUTIVE OFFICER

Comment 1. End-of-year tally of impacts and mitigation owed

A mitigation approach in the SEIR is to tally the year's impacts but not implement mitigation until the end of the year or defer mitigation to the future. We support this, on one hand, because this may help facilitate planning and budgeting for larger, multi-benefit projects. However, we recommend Valley Water expand the list provided in the mitigation and monitoring program (MMRP) (Attachment I to the SEIR). The list has good examples for this approach (e.g., Coyote Creek Reach 10b restoration), but we recommend to also include additional, smaller projects so that Valley Water would be prepared to address a variety of circumstances that result in impacts requiring mitigation from SMP activities.

While a "smaller" project may be less expensive, we recognize that a significant amount of planning needs to be invested even to identify and develop a concept plan for a small project. Nonetheless, having a list of smaller projects would help to offset the SMP impacts throughout the Program Service Area, especially in urbanized reaches where a larger project (like Coyote Creek Reach 10b) is limited due to space requirements and property ownership. To address this in the SEIR, we recommend identifying potential areas where improvements may be feasible.

On the other hand, deferring mitigation to the future would result in additional mitigation required due to temporal losses. The SEIR should be revised to address the additional mitigation requirements for temporal losses caused by deferring mitigation to a later date rather than during the period when an impact occurs.

The SEIR (pg. ES-17 and others) states "Valley Water will quantify Program impacts on biological resources, such as the acreage of impacts to wetlands and riparian habitats, sensitive communities, and special-status species' habitats, on an annual basis as work." Please note that impacts to streams need to be quantified in terms of impact *lengths*, in addition to acreage, functions, and services.

Comment 2. Mitigation via grant program or partnerships

Valley Water is considering a mitigation approach via a local grant or partnership program that may fund a variety of project categories such as creek cleanup projects, creek restoration projects, assistance for the unhoused and associated creek encampment removal and bank improvements. This may be acceptable to the Water Board depending on the details of a project proposed under this mitigation category. We are concerned, however, that relying on other parties to perform a project that is funded by Valley Water may become cumbersome and unreliable. To address this, we recommend the SEIR to be revised to include frameworks for how a grant program would be managed and tracked.

Additionally, the SMP excludes "work performed by others" and the Water Board's Certification would not cover work performed by others except mitigation via the Santa Clara Valley Habitat Plan (VHP) in-lieu fee program (ILFP), as proposed in the SEIR, or other ILFPs. At this time the proposed approach to fund a grant program may not be acceptable for us to authorize in a Certification, but we recognize for CEQA purposes this may be acceptable.

We may be able to accept a partnership with another entity outside of an ILFP. In contrast to funding others with a grant program, partnering with another entity would still allow Valley Water to retain ownership and management of a mitigation project. This type of arrangement, such as the recent partnership between Valley Water and Trout Unlimited for removal of Pickell's dam in the Central Coast Water Board's jurisdiction of the SMP, would support SMP mitigation strategies (e.g. fish passage improvements; multi-benefit projects) that could be easily folded into Valley Water's existing proposal process and annual reporting frameworks.

This mitigation category also proposes mitigation via funding of community services, which may include "...housing, employment, vocational services, mental health and recovery programs, and other related support services for the unhoused..." (SEIR, pg. ES-19, and others). For purposes of CEQA, the SEIR should provide additional details for how this would serve as mitigation of SMP impacts. Without such details it is difficult to determine if this would be an acceptable mitigation approach to the Water Board, and as proposed currently, we would not accept this approach as mitigation in the Certification. Would it be possible for this approach to be covered under an ILFP? This could create a clear avenue for the Water Board to accept mitigation via an ILFP credit system.

Comment 3. Removing the Modified with Ecological Value stream classification (sediment removal)

Removing the Modified with Ecological Value would transfer about 110 miles (580,800 linear feet (LF)) of streams to the Modified category in the San Francisco Water Board's jurisdiction, and an additional 11.85 miles (62,568 LF) in the Central Coast Water Board's jurisdiction. This eliminates the sediment removal limit of 300 LF for these 122 miles of stream reaches. (A limit of 300 LF is applicable to streams classified as Unmodified; and under the existing SMP applies to the Modified with Ecological Value category.) Instead, the sediment removal limit would be 5,000 LF applicable to streams classified as Modified.

Converting the Modified with Ecological Value reaches to Modified will result in increased degradation that has not been addressed adequately in the SEIR; we recommend Valley Water revise the SEIR to further evaluate this impact. The adverse impacts of sediment removal results in degradation of a stream's beneficial uses first by diminishing the system's tendency for dynamic equilibrium in sediment transport that would help the system maintain its channel form; and second by removing benthic biota in the sediment, removing vegetation which serves as wildlife habitat, and degrading other riparian services such as nutrient exchange. The beneficial uses of streams designated in the Basin Plan (pursuant to Clean Water Act and California Water Code) degraded by sediment removal include (but are not limited to): wildlife habitat, warm freshwater habitat, cold freshwater habitat, and non-contact recreational use.

It is unclear if the impact of removing up to 5,000 LF per project in a Modified stream has ever been evaluated pursuant to CEQA. Please clarify the inception of, and basis for, the limit of 5,000 linear feet for sediment removal in streams classified as Modified. Was this limit developed in an earlier CEQA review for the SMP (which consist of the original EIR certified in 2002, and a subsequent EIR in 2012)? This SEIR should at

least evaluate the "new" impact to the additional 122 miles of streams, and should provide context, ideally from previous CEQA reviews, for how the limit was developed for Modified streams.

Beginning in 2014 with SMP-2, the mitigation ratio for impacts of sediment removal was a range of 1:1 to 1.3:1 based on the mitigation type. In the mid-cycle SMP renewal of 2020, the mitigation ratio for sediment removal was modified from a range of 1:1 to 1.3:1, to 1:1 without a range. The proposed SMP-3 ratio for mitigation of sediment removal remains 1:1. We recommend reverting the mitigation ratio back to the amounts in SMP-2 for a range of 1:1 to 1.3:1 depending on the mitigation type, or to increase the ratio to 1.2:1, or greater. This would account for about two years for a system to recover from sediment removal and helps to account for the temporal loss of vegetation removed along with the sediment, while a ratio of 1:1 does not appropriately address degradation to the system. This should be further evaluated in the SEIR.

Finally, we propose a new limit of 1,500 LF for sediment removal in Modified streams to help minimize this impact, as is in the Napa Flood Control District SMP. This proposal should be evaluated in the SEIR along with the points raised above in this comment.

Comment 4. Mitigation via recovery of post-wildfire recovery and other potential vegetation management actions affecting canopy cover

As proposed, mitigation via post-wildfire recovery may include removal of vegetation. The State Water Resources Control Board (State Board) has developed a general order for wildfire recovery (Order No. WQ 2023-0055-DWQ) (general order) certifying the U.S. Army Corps Regional General Permit 10. The general order does not authorize removal of vegetation, and we would not likely authorize vegetation removal with Certification of SMP-3 for this mitigation approach. We recommend the SEIR be revised to address a more nuanced approach for fire-impacted site recovery using the State Board's general order as a model.

Another model we recommend to be evaluated in the SEIR is the general BMP for retention of canopy cover (BMP 3(f)) in the Statewide Fuels Reduction Environmental Protection Plan (EPP) developed by the California Natural Resources Agency and California Environmental Protection Agency to fulfill Governor Newsom's State of Emergency Proclamation signed on March 1, 2025, to expedite fuels reduction projects that reduce severe risks of catastrophic wildfire. EPP's general BMP 3(f) includes retaining at least 75 percent of the overstory and 50 percent of the understory canopy of native riparian vegetation within 100 feet of perennial streams and 50 feet of intermittent streams; and treatments should target overgrown vegetation outside the riparian zone.

We recommend the EPP canopy cover metrics also be applied to the Vegetation Management maintenance activity in the Manual. The existing and proposed approach is to limit vegetation removal to no more than 20 percent of the canopy cover in any reach. Using a "reach" is relative since a reach length or area varies. The EPP example limits the canopy cover effects to "within 100 feet of perennial stream" and "50 feet of

intermittent streams”. Similarly, other SMPs in the Water Board’s jurisdiction limit a canopy cover impact to 100 LF. We recommend the SEIR be revised to incorporate such metrics for vegetation management activities.

Comment 5. Mitigation and Monitoring Program (Attachment I)

We do not concur with details of Impact Significance Criterion BIO-3-*Augmentation of Spawning Gravel* (BIO-3) for the following issues. As proposed, BIO-3 impacts would be based partially on whether there is suitable flow at the site where spawning gravel would be removed. Removal of spawning gravel is a significant impact regardless of the flow conditions, because this resource would be depleted from the system and a stream’s beneficial uses that are assigned to a stream pursuant to the Basin Plan, would be degraded, including fish spawning habitat (SPWN), protection of rare and endangered species (RARE), cold freshwater habitat (COLD), and warm freshwater habitat (WARM). This flow caveat to spawning gravel impacts should be removed from impact BIO-3 and BIO-3 should be reevaluated in the SEIR, accordingly.

Also, the size metric of 100 ft² or 10 square meters (which is 107 ft²) should be removed from BIO-3. The impact of removing spawning gravel should be based on the actual area and volume; as noted above, removing spawning gravel depletes this resource from the system and adversely impacts a stream’s beneficial uses for SPWN, RARE, COLD, and WARM. The area threshold should be removed from BIO-3, and the SEIR should be revised to evaluate BIO-3 without a size threshold for spawning gravel removal.

Comment 6. SMP manual, Table 10-1-*Summary of Proposed SMP-3 Mitigation Ratios*

The SMP manual (Manual) is included as Attachment A to the SEIR. The Manual incorporates details for implementing the SMP, and it would be part of a Certification for SMP activities. We have the following comments on **Table 10-1** in the Manual, and we plan to continue reviewing the Manual to provide additional comments after this SEIR review.

- 6.1 Column 4-Mitigation Options. This section proposes to allow “Reach characterization sheets” as a mitigation option. We support the use of reach characterization sheets for maintenance planning. For purposes of issuing a Certification we would not authorize the use of reach characterization sheets for mitigation of unavoidable impacts resulting in loss or degradation to jurisdictional waters of the State.
- 6.2 Column 3-Notes. This section indicates that removal of vegetation of less than 6 inches diameter at breast height (DBH) or less (<6” dbh) has a mitigation ratio of 1:1 but proposes: “A lower mitigation ratio should be applied where resprouting occurs within 1 year and full functions and values return within 2 years.” We disagree with this and would not approve a ratio less than 1:1 for purposes of issuing a Certification. Under other permits with vegetation removal outside of the SMP, we typically require a minimum of 1.1:1 to account for temporal loss of the vegetation removal. For SMP-3, a mitigation ratio of at least 1:1 should be retained and the note stating otherwise should be deleted.

- 6.3 Column 3-Notes. This section states, “The removal of invasive trees and certain hazard trees (e.g., diseased ones) that provides an ecological benefit does not require mitigation.” We would not authorize this for issuance of a Certification for SMP-3 because such vegetation is part of the stream’s ecosystem. We recommend the SEIR provide additional evaluation to address this impact.
- 6.4 Removal of Non-Invasive Trees >6” DBH. This category of SMP-3 maintenance should be further evaluated in the SEIR and the table should be revised to address the following issues:
- a. The proposed ratio is 1:1 for this maintenance category. We would not support a default ratio of 1:1 across all tree removal scenarios for >6” DBH trees, because it does not mitigate for temporal loss of a removed tree while a replacement tree matures. The existing ratios in the SMP-2.5 Manual for tree removals of 6” to 12” DBH are up to 3:1 and we recommend these existing ratios be retained. For removal of a tree with dbh >12”—which would be a new category of SMP maintenance activities—removal of the tree should be evaluated holistically and mitigation provided based on case-specific conditions to determine appropriate mitigation.
 - b. Under this category, removal of a native tree species and a non-native, non-invasive species are treated the same, though a greater ratio may be required for a native species than for a non-native for purposes of issuing a Certification.
 - c. We do not agree with footnote 5 in Table 10-1, which states: “If the tree is determined to provide unique functions and values, removal of the tree will be mitigated at a 1:1 ratio.” This is redundant with the proposed ratio of 1:1 stated already in the table so the purpose of this footnote is unclear. Also, “unique” is not defined in the manual. “Unique” suggests to us that this may be applicable to highly valuable trees such as native, non-hybridized sycamores, which should be evaluated on a case by case basis and likely warrants a high mitigation ratio of at least 3:1 as in the existing SMP-2.5 manual. We recommend removing this footnote from Table 10-1.
- 6.5 Asterisk for Tree Removal >6” DBH (Column 2, Line 1). The proposed mitigation ratio of tree removal in this category is 1:1 as noted above in Comment 6.3. This proposed mitigation has an asterisk for the footnote in the table which indicates: “Unless covered by the VHP plan” (VHP is the Santa Clara Valley Habitat Plan). This would not meet the Water Board’s requirements because we have not authorized the VHP, and this would result in tree removal without mitigation of impacts to beneficial uses of jurisdictional State waters. This footnote should be removed and the SEIR should be revised to incorporate mitigation for removal of trees with >6” DBH that would meet the Water Board’s requirements pursuant to the Basin Plan. Please note that payment of VHP fees should not be proposed

first before evaluating how mitigation of tree removal would meet the Water Board's requirements for mitigating impacts to a stream's beneficial uses.

- 6.6 Temporary impacts to wetlands. The existing and proposed mitigation ratio of this impact is 0:1 (i.e., no mitigation required) because there is an assumption that the wetland vegetation naturally recovers by year 2. A default ratio should be 1.2:1 to account for temporal loss while the wetland recovers.

Also, footnote 1 indicates a ratio of 0:1 is "self-mitigating". We understand that for database tracking purposes, input of 0:1 translates to no mitigation required; but in this case, the temporal degradation of a wetland is not self-mitigating. We recommend changing the ratio to 1.2:1 and deleting footnote 1 for purposes of issuing a Certification.

- 6.7 Sediment removal. This category **incorrectly** indicates that mitigation (bold italicized font added for emphasis) "...applies to a non-PMA **or earthen channel bottoms**" (i.e., PMA is a previously mitigated area). This is incorrect and the Water Board would not authorize this for purposes of issuing a Certification. **Please correct this error. Specifically, mitigation requirements are applicable to any stream including those with a non-earthen bottom.**

This error was corrected during the SMP-2.5 Manual revision process in the text of the Manual, but the error did not get corrected in the associated SMP-2.5 table and Valley Water has not issued an erratum sheet to correct the error in the table. The SMP-3 Manual revision is the opportunity to correct this error. (We recognize that some stream reaches have been previously mitigated through the SMP-1 land preservation mitigation program, and we do not take issue with that part of this note in Table 10-1.) See also Comment 3 above pertaining to sediment removal impacts in Modified streams.

- 6.8 Large woody debris removal in salmonid creeks. Additional details are needed in the SEIR and the Manual to cover the following additional impacts of removing large wood (referred to as large woody debris (LWD)) from a stream: (1) LWD removed from a salmonid stream above the ordinary high water mark; (2) LWD removed from a non-salmonid stream from below or above the OHWM; (3) LWD removed from a salmonid stream upstream of the limit of anadromy; (4) removal of a root wad or other wood based on complexity and stream functions the wood provides, even if it does not meet the definition of "LWD" (which is defined in the SMP as being at least 6 feet long and 12" diameter, and being in a salmonid stream, and being below OHWM).

Comment 7. Chinook salmon in Guadalupe River

DNA analysis of salmonid bones in archeological remains along Guadalupe River revealed Chinook salmon was traditionally in this watershed. To address this, we recommend you add the following reference to the list of resources for biological conditions in the SEIR, Table 3.4.1-*Selected Valley Water Fisheries Studies*: Lanman RB, Hylkema L, Boone CM, Allée B, Castillo RO, Moreno SA, Flores MF, DeSilva U,

Bingham B, Kemp BM, 2001. *Ancient DNA analysis of archaeological specimens extends Chinook salmon's known historic range to San Francisco Bay's tributaries and southernmost watershed*. PLoS One. 2021 Apr 15;16(4):e0244470. doi: 10.1371/journal.pone.0244470. PMID: 33857143; PMCID: PMC8049268.

Comment 8. Work window extension requests

Best management practice (BMP) GEN-1 (Attachment A to Manual (which is Attachment A to the SEIR) addresses the process for requesting a work window extension to perform work after October 15. While we recognize in some cases a project may need to extend beyond October 15 if there is a risk to public safety, property, or infrastructure, we discourage Valley Water to rely on work window extensions for project planning and scheduling. We do not support extensions to initiate a previously approved project after October 15. We recommend removing this element from BMP GEN-1. On a case-by-case basis we are open to considering approval of starting a project after October 15, such as during extreme drought conditions, but this should not be included in the standard BMPs for routine maintenance.

Conclusion

Because the SMP-3 Manual would institute changes to Valley Water's program, we plan to provide additional comments on the Manual as soon as possible. This is important because the Manual has many details that are not covered in the SEIR.

We look forward to receiving your responses to our comments, and to continuing to work with you on the SMP. If you have any questions please contact Susan Glendening by email at susan.glendening@waterboards.ca.gov or phone at (510) 622-2462, or me by email at elizabeth.morrison@waterboards.ca.gov or phone at (510) 622-2330.

Sincerely,

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