3.4 Santa Clara Valley Audubon Society 2

October 10th, 2017

Mehdi Ozbilgin
Senior Water Resources Specialist
Santa Clara Valley Water District
5750 Almaden Expressway San Jose, California 95118
mozbilgin@valleywater.org

Re: Scoping Comments on the Initial Study and Notice of Preparation (NOP) for Santa Clara Valley Water District’s (SCVWD) Pacheco Reservoir Expansion Project (Project).

Dear Ms. Ozbilgin,

The Santa Clara Valley Audubon Society (SCVAS) thanks you for the opportunity to provide scoping comments on the NOP/IS for the Pacheco Reservoir Expansion Project. SCVAS has been a strong advocate for wildlife and habitats since our founding in 1926. Our mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation.

Here are our questions, requests, and comments:

1. Please provide a detailed and comprehensive account of all water rights and allocations from the existing Pacheco Dam that will be carried forward if the new Dam is built. Please describe all new water rights allocations.

2. An EIR is meant to inform the public. Please describe the issue of “low point issue in San Luis Reservoir” (mentioned in Project Description, Page 1-2, NOP) and explain how it is related to the Project.

3. Section 1.5.1 provides, “As part of the Project, SCVWD will transfer 2,000 AF of its CVP water contract (in below normal water years), directly or through transfer and exchanges, in perpetuity to Reclamation and USFWS’ Refuge Water Supply Program (RWSP), for use in the Incremental Level 4 water supply pool for wildlife refuges.”
   - Please explain what “Incremental Level 4 water supply pool” entails?
   - Can SCVWD provide guarantees that the 2,000 AF will be available to USFWS Refuges, and will not be directed to other uses?
   - How much water (in AF) will provide the baseline needs of RWSP? How significant (in %) is the allocation of 2,000 AF?
   - Please revise the condition to allocate water to RWSP every year, not only in “below normal water” years. This should help provide refuges into the future as population increases, water demands increase, and the climate changes.
• Section 1.6 Project Benefits provides "...Increased storage capacity provided by the Project would allow SCVWD to provide up to 2,000 acre-feet of water to wildlife refuges in the San Joaquin River watershed..." (emphasis added). Please explain in detail the circumstances that will result in the supply of less than 2,000 acre-feet of water to wildlife refuges in the San Joaquin River watershed.

4. Please rank the prioritization of water allocation to users (who gets the water first, and how much) during wet years and drought years, especially during prolonged drought years.

5. Section 1.6, Project Benefits, shows no direct benefits to San Benito County.
   • Are there benefits to San Benito County agriculture?
   • Please consider https://benitolink.com/news/sups-seek-avert-liability-repairing-levées-reform-defunct-property-owner-supported-water - please explain how this project may relate to repair, maintenance and upkeep of flood-protection and water supply infrastructure owned by the Pacheco Water District, including levees in San Benito County?

6. Section 2.4.2 Agricultural and Forestry Resources shows a potential impact due to inundation of Oak Woodland.
   • This impact should also be evaluated as a Biological Resource impact, and consider and mitigate impact to Oak Woodland resources in Santa Clara County. Please review and consider:
   • Please explain what is meant by, "...the Project has the potential to diminish agricultural land resource quality and importance because of altered and/or soil saturation" (emphasis added). Please analyze project impacts to farms and agriculture in San Benito County, and include detailed maps for areas of potential impacts.

7. Section 2.4.4 Biological Resources describes mitigation for Special-status wildlife (at 2-11) stating, “Impacts on individuals or habitat for special-status wildlife would require incidental take authorization” and “Coverage for terrestrial species may also be obtained through the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (VHP). The Project is not a covered activity in the VHP; however, it could be added through a special major amendment procedure and conservation strategy for terrestrial covered species”. Alternatively, project-specific consultation process with the wildlife agencies will take place. The Scoping Document finds, “If the VHP is amended to include expansion of Pacheco Reservoir, the proposed Project will comply with the conditions of the VHP. If the VHP is not amended to include the proposed Project, federal Endangered Species Act and California Endangered Species Act consultation and compliance would be addressed through a separate mechanism and would not impact the existing HCP. Therefore, the proposed Project would not conflict with the VHP or any other adopted HCPs or NCCPs…” (emphasis added).
We strongly disagree with the finding that the Project will not have significant conflicts with the VHP, for the following reasons:

- Please discuss the process for a “special major amendment procedure” for the VHP. In our experience, a special major amendment is an extremely lengthy and costly process. Such process is likely to engage not only the CDFW, USFWS and six current partner agencies, but also many additional stakeholders from both Santa Clara and San Benito Counties. Thus, a future “special major amendment procedure” cannot be guaranteed and in our opinion, is extremely unlikely to come to fruition. Please do not rely on permitting through the VHP for this project.

- In the unlikely scenario that the project will be processed through a special major amendment to the VHP, it will require the VHP to add significant acreage of mitigation land to accomplish its Conservation Goals and Objectives for all habitat types and covered species. This will impede and delay the ability of the VHP to effectively implement its existing conservation strategy in the foreseeable future.

- Given that the Project’s land could alternatively be used by the habitat plan to achieve its conservation goals, please explain how the VHP may achieve the NCCP goal of enhancing natural communities if this site is not available for preservation. Please identify similar properties that the VHP can feasibly acquire to mitigate for the take of the VHP-covered species on the project site and the loss of habitat and biological resources to project construction and the inundation of over 1,300 acres of oak woodland, wetlands, riparian forest and other sensitive biotic communities.

- If the Project is considered through a federal Endangered Species Act and California Endangered Species Act consultation (section 7), the project could compete with the VHP for suitable mitigation land needed to accomplish the VHP’s Conservation Goals and Objectives for habitat types and covered species.

The EIR should evaluate potential conflicts with the VHP, including potential competition for land, and the loss of potential mitigation on site. The EIR should also analyze potential conflicts with the Conservation Strategy for each covered wildlife species and each habitat type.

8. Section 2.4.4 Biological Resources: Surveys are needed for agencies and for the public to fully understand the potential impacts to all listed plant and wildlife species (including Species of Special Concern, threatened and endangered species) that could occur on the Project site.

- The Scoping document states, “There are no known occurrences of special-status plants in the vicinity of the Project”. Since the property has been in private hands for decades, it is not surprising that endangered plant species have not been observed there. Please survey for endangered plants species. Please conduct the surveys during the seasons that the plants are identifiable.

- Please provide surveys for American Badger
• Please provide surveys for the following bird species:
  • Least Bell’s Vireo
  • Southwest Willow Flycatcher
  • Please survey for Golden eagle nesting sites
  • Tri-colored Blackbird nesting colonies

• Please review the species of climate threatened and endangered bird species here: http://ca.audubon.org/conservation/californias-climate-threatened-and-endangered-birds and analyze impacts to birds at risk.

• Please provide survey for all three listed amphibian species: California tiger salamander, yellow- and red- legged frog.

9. Please disclose what types of recreation (boating, fishing, swimming...) will be permitted, and fully analyze potential direct and indirect impacts.

10. Exotic and invasive aquatic organisms may arrive at Pacheco reservoir with imported water and with recreation vehicles. Please analyze impacts of potential introduction of exotic and invasive aquatic organisms into Pacheco watershed and Monterey Bay.

11. Section 2.4.13 Population and Housing proposes that the project will not induce growth. We disagree. Additional water availability and reliability in Santa Clara County is very likely to translate into growth in the County.

We thank you for the opportunity to provide these comments. Please do not hesitate to contact us if you have questions, and please keep us on the notification list for any additional opportunities for the public to engage in the evaluation and permitting processes.

Thank you,

Shani Kleinhaus, Ph.D.
Environmental Advocate
Santa Clara Valley Audubon Society
22221 McClellan Rd., Cupertino 95014