



**Amah Mutsun Tribal Band of Costanoan/Ohlone Indians**

*Historically known as "San Juan Bautista Band and San Juan Band" Indians of California*

PO Box 5272 | Galt, CA 95622

Santa Clara Valley Water District  
Attn: Todd Sexauer  
5750 Almaden Expressway  
San Jose, CA 95118  
tsexauer@valleywater.org

CC: Amah Mutsun Tribal Council, Rovianne Leigh, Sara Clark

February 15, 2022

**Amah Mutsun Tribal Band comments regarding the Pacheco Reservoir  
Expansion Project *Draft Environmental Impact Report***

Dear Valley Water and Mr. Sexauer,

Please find the below comments from the Amah Mutsun Tribal Band (AMTB) regarding the Draft EIR for the proposed Pacheco Reservoir Expansion Project. We submit these public comments as an addition to other previous and ongoing input provided by our tribe on this project as part of the tribal consultation process between Valley Water, our tribe, and various contracted consultants of Valley Water.

As is correctly analyzed in the DEIR, the proposed project—as well as each of the four very similar described alternative projects—would result in numerous Significant and Unavoidable adverse impacts to Tribal Cultural Resources including ancestral burial sites, sacred ceremonial sites, village sites, rock art sites, and other significant archaeological sites. In summary, from the viewpoint of Amah Mutsun tribal cultural and historical preservation within our ancestral territory, the extent of impact to Tribal Cultural Resources and sacred sites from the proposed

project would be very severe. It is not an exaggeration to state that, in terms of identified impacts to specific recorded cultural/archaeological sites, this project proposal represents the single most destructive project that our tribe has consulted on in our recent history.

The Executive Summary of the DEIR provides a list of “Areas of Known Controversy” [ES.10] that includes no reference to impacts to Tribal Cultural Resources and sacred sites. We note that much of the burden of detrimental, unavoidable impacts resulting from the proposed Pacheco Reservoir Expansion Project would fall upon our tribe. This burden must be understood in the context of our tribe also being historically dispossessed from our ancestral lands as a result of the traumatic history of three waves of destructive colonization during the Spanish, Mexican and American periods. Over the past three centuries our people have endured forced removal and deliberate attempts to eradicate our culture, spirituality and humanity. The majority of sacred sites within our ancestral territory have been lost to development, which is another reason why locations with intact assemblages of cultural and ceremonial sites such as the Pacheco Valley are so important to our tribe.

We also note that in section ES.11 of the Executive Summary, “Issues to be Resolved,” there is no mention of the Significant and Unavoidable Impacts of the proposed project to Tribal Cultural Resources and sacred sites. While “*Selection of lands and activities for compensatory mitigation related to botanical/natural community and terrestrial resource mitigation measures*” appears on the list of issues to be resolved, there is no corresponding mention of compensatory mitigation or selection of lands and activities related to the destruction of Native American Tribal Cultural Resources and tribal history.

Valley Water’s promotional materials regarding the proposed Pacheco Reservoir Expansion Project describe the project as “A 21st Century Solution Delivering Sustainable Benefits for All of Us.” However, it does not appear to be the case that this project delivers sustainable benefits to our Amah Mutsun tribal members or to our honored ancestors. We question whether the proposed project is truly a 21st century solution if construction of the project would place the greatest burdens stemming from project impacts upon a historically marginalized and dispossessed Indigenous community. We recommend that Valley Water consider adopting a new policy and set of commitments related to Environmental Justice standards, to apply to the process of considering projects and solutions to meet regional water supply demands including the proposed Pacheco Reservoir Expansion Project.

### **Section 3.7: Cultural Resources and Tribal Cultural Resources**

The Draft EIR identifies 29 distinct cultural sites that are characterized as Tribal Cultural Resources located in the area of project impact. These sites are located both upstream of the

proposed new dam, or in the “access/utility” portions of the impact area (APE). We cannot overstate the cultural significance to the Amah Mutsun Tribal Band of the assemblage of sacred sites and village sites along the North Fork of Pacheco Creek that has been rediscovered through ongoing archeological surveys in the project APE. The DEIR summarizes that:

*“...up to 16 of the habitation sites are located in the expanded reservoir inundation area of the Proposed Project or the alternatives. All but one habitation site known to contain significant elements (i.e., human remains, cupules/linear petroglyphs, possible non-residential buildings) are located within the expanded reservoir above the proposed upstream dam site.” [3.7-20]*

Thus, if the proposed reservoir project or any of the four identified alternative projects is built, the most significant of our ancestral sites known to exist in this Pacheco Creek area will be either buried underwater, irreversibly damaged or destroyed, or rendered inaccessible through the process of project construction and sediment redistribution. As a result, the ability of our tribal members to return as a tribe to these relatively undisturbed sacred grounds and bring ceremony back to the land would be compromised. In addition, the potential for long-term collaborative research projects at these sites—these singular windows into the world of our ancestors—would be lost.

Much remains to be learned about the sacred sites and cultural sites that have been rediscovered along North Fork Pacheco Creek. Recent archaeological surveys which Amah Mutsun Native Monitors participated in have uncovered highly significant new information that is only just beginning to be analyzed. In that sense, the analysis of impacts to Tribal Cultural Resources contained in the DEIR can only be considered preliminary. Only certain portions of the APE were surveyed and not all known archaeological sites identified within the APE were sampled. [REDACTED]

[REDACTED] Some of the known features of these sites are briefly summarized in the DEIR under Impact-TCR1 include:

*Locations containing cupules (circular indentations) or linear grooves carved into rock outcrops, which are associated with a spiritual or ceremonial purpose, are found at nine of the sites preliminarily determined to be TCRs within the upstream region of the APE subject to construction of the Proposed Project; most of these outcrops are located in habitation sites. Large circular depressions, interpreted as possible large non-residential buildings, have been identified at four of the sites preliminarily determined to be TCRs within the upstream region of the APE subject to construction of the Proposed Project; one site was described as a “dance ground” during consultations.*

[REDACTED]  
[REDACTED]  
[REDACTED] Other historic ceremonial dance grounds or dance houses are known only as general locations such as at Quiroste Valley or Juristac, with the specific location of these sites having not yet been re-located in the present day.

Despite the limited opportunities to sample identified sites within the APE due to budgetary and access challenges, the results of the initial sampling effort is very compelling. [REDACTED]

[REDACTED]:

- Archaeological site SCL-1007: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- Rock art sites: These types of cultural resources are important to the Tribe for several reasons. [REDACTED]  
[REDACTED] These sites serve as an important nexus to reconnect with tribal history and are tangible, embedded marks of artistic and cultural expression created by our ancestors.
- Structures: [REDACTED]  
[REDACTED] Intact archaeological site features of this nature are not common, and where they do exist they are often severely damaged due to the historical impacts of field plowing, agriculture, urbanization and other forms of development. A vast amount of potential new knowledge is contained in archaeological deposits at these locations. In addition, structures associated with ceremonies are of utmost cultural and spiritual value to our tribe.
- Trade beads: The presence of historical-period trade beads affirms the utilization of this area by our ancestors in the Historic (Mission) period. [REDACTED]  
[REDACTED]  
[REDACTED] Sites that were used in the colonial hinterlands are important elements in furthering our understanding of survival, resistance, and persistence during one of the most devastating times in our Tribal history. This is an additional defining characteristic that increases the significance of this complex of cultural sites for our tribe.

If the proposed project is approved, it is extremely important that the AMTB be provided the funding and opportunity, along with archaeological consultants or research partners of our choice, to conduct an extensive Integrated Tribal Cultural Resources survey program, followed by subsequent research including conducting an in-depth geophysical survey of the identified sites. Such a survey would include the utilization of Ground Penetrating Radar and other less-invasive or non-invasive techniques to document the subsurface dimensions of these irreplaceable sites and features.

Whether or not the proposed Project proceeds, our tribe would like to learn as much as we possibly can from the cultural and archaeological sites found in the APE, through research partnerships and collaborative archaeology. There are numerous archaeological contexts in which to examine how our ancestors interacted with natural resources, stewarded culturally-significant species, and used Indigenous prescribed burning to maintain vegetal communities. Detailed archaeobiological analysis takes many years, yet this kind of fine-grained analysis of cultural deposits may provide invaluable sources of historical ecological information that can be used by our Tribe and by land stewards in general to make decisions regarding natural resource management. Moreover, these sorts of archeological deposits tell us critical information about the subsistence practices and foodways of our ancestors.

As more information is pieced together through ongoing collaboration between our tribe, archeologists and ethnohistorians, and a fuller picture of these village sites and sacred sites emerges, we will be able to begin considering how all of the individual cultural elements in the landscape are related. Do these sites together constitute a distinct cultural district or tribal cultural landscape? We believe they do, but much remains to be learned. As we learn more, we can also begin to draw connections between these re-discovered locations and place names and stories that are recorded in ethnographic records and our tribe's oral histories.

#### Request for Cultural Easement to be granted to AMTB

In consideration of the great significance of the cultural sites/Tribal Cultural Resources located with the APE, it is of utmost importance to AMTB that—whether or not the proposed project is approved and constructed—our tribe is granted cultural easements, or at minimum MOU's, that will facilitate access to these areas for our tribal members. We must ensure that our tribal members are able to return to this significant ancestral landscape, [REDACTED] [REDACTED] for prayer and ceremony and to restore our relationships with this area.

### Impact Cul-3: Disturbance of human remains

It is the sacred responsibility of the Amah Mutsun to protect the remains of our ancestors and to prevent their disturbance whenever possible. Impact Cul-3, states that human remains have been identified during survey efforts at 13 Native American archaeological sites within construction and inundation areas of the expanded reservoir, [REDACTED]

[REDACTED]  
[REDACTED] The scale of disturbance to ancestral burials that would result from the proposed Project is of dire concern to our tribe.

[REDACTED]  
[REDACTED] It can only be assumed that as a result of further disturbance of native soils resulting from project construction and operation, many more burial sites would be disturbed or desecrated, in areas known to contain human remains and also in areas that have not yet been surveyed. No mitigation can truly compensate for the spiritual harm that results from the desecration of the resting place of an ancestor.

Impact Cul-3 of the DEIR on page 3.7-45 states that additional *“human remains, or habitation sites with the potential to contain human remains, may be discovered in the access/utility region of the APE where surveys have not been conducted to-date.”* Please specify here for clarity that the access/utility region of the APE constitutes 2,959 acres. Please also specify here the *additional portions* of the APE (other than the access/utility region) where archaeological surveys have not yet been conducted due to issues with obtaining legal access. For instance, the summary of Human Remains on page 3.7-29 of the DEIR states that, *“four recorded habitation sites located within the proposed footprint of an expanded reservoir and with the potential to contain human burials and/or human remains, have not yet been evaluated due to lack of legal access.”*

#### 3.7.4.6—Cumulative Impacts

AMTB agrees that *“even with the implementation of proposed mitigation measures, the Project’s and alternatives’ contribution to cumulative cultural and tribal cultural resources impacts would remain cumulatively considerable, and therefore, significant and unavoidable.”*

While we agree with conclusion of this discussion of cumulative impacts to cultural resources, AMTB recommends expanding the list of related “past, present and reasonably foreseeable future projects” that are analyzed to include other projects of regional significance and relevance to the overall integrity of Amah Mutsun Tribal Cultural Resources, including:

- San Luis Reservoir— The historic construction of the B.F. Sisk Dam and San Luis Reservoir project, which destroyed or flooded numerous historic sites, archaeological sites, and Tribal Cultural Resources including resources of significance to Mutsun history including the San Luis Gonzaga Adobe and Outstation, built by “San Juan Bautista Indians” in 1810, the Pacheco Adobe and worker’s rancheria and prehistoric sites associated with the Tomoy/Tomoi (Mutsun speaking) people.
- Sargent Quarry Project— A proposed 317-acre sand and gravel mining operation on the Sargent Ranch property near Gilroy, in a sacred area known as the Juristac Tribal Cultural Landscape. Santa Clara County is presently preparing an EIR for the proposed project, due to be published this spring. The project would result in significant and unavoidable impacts to Amah Mutsun Tribal Cultural Resources, and many project impacts are comparable to the impacts of the Pacheco Reservoir Expansion Project.
- Historic agricultural impacts in the San Felipe Sink, downstream in the Pacheco Creek/Pajaro River/San Felipe Sink watershed. Many significant Tribal Cultural Resources have historically been eliminated as a result of centuries of intensive agriculture activities, including draining and filling lakes and wetlands, tilling and disking native soils, grading and recontouring landforms, and large-scale removal of native vegetation. The cumulative effects of these actions destroyed or degraded prehistoric village site locations and eliminated important landscape features held sacred by the Amah Mutsun Tribal Band which include San Felipe Lake and three additional culturally significant lakes.
- Historic construction of the Miller Canal (1874) which reduced the size of San Felipe Lake by up to 60 percent (Valley Water and The Nature Conservancy 2008).
- Construction of the original Pacheco Reservoir
- Construction and widening of the U.S. 101 Highway alignment through Pacheco Pass

### **Section 3.5 Biological Resources - Botanical/Wildlife**

The Amah Mutsun Tribal Band is culturally obligated to take care of our plant and animal relatives and the health of our natural environment and waterways. For the Amah Mutsun Tribal

Band and many other Native American tribes, biological and abiotic natural resources that were used traditionally for cultural purposes are essential for contemporary cultural practitioners and for tribal cultural revitalization efforts. These resources frequently occur in association with prehistoric archeological sites and other Tribal Cultural Resources, as a key component of Tribal Cultural Landscapes. Documenting and stewarding such natural resources in the traditional territory of the Amah Mutsun Tribal Band is an integral part of the mission of the tribe, carried forth by the Amah Mutsun Land Trust.

Notes on specific species and natural communities:

- California Bay Forest (Mutsun language: sokkochi)— California bay trees and their leaves, fruits and nuts constitute an important food source and medicine for the Amah Mutsun which continues to be gathered and utilized by tribal members in the present day. AMTB considers discrete stands of California Bay Forest to be Tribal Cultural Resources.
- Valley Oak Woodland (Mutsun language: arikkay)— valley oaks, black oaks, live oaks and tanbark oaks are sacred trees for the Amah Mutsun and the acorns they furnish are a central aspect of the traditional Mutsun diet. Valley oaks produce especially prized acorns and are subject to special stewardship considerations. Mature valley oak trees are culturally and biologically significant landscape features and all efforts should be made to preserve them.
- California floater, *Anodonta californiensis* (Mutsun language: *Siyal*), a species referenced in Section 3.06 (Fisheries) of the DEIR, is a very significant traditional food resource for the Amah Mutsun Tribal Band, and species of cultural importance. Freshwater mussels provide many valuable ecosystem benefits such as water purification. Historically, the Pajaro River was noted for its native bivalve diversity. California Floater can live as long as 100 years and reach reproductive maturity at 6-12 years. It is remarkable that this species continues to persist in Pacheco Creek and the Pacheco Reservoir, as noted in the DEIR. AMTB is concerned with the management and preservation of this species and considers the entire Pacheco Creek population of California floater to be a Tribal Cultural Resource.
- Sycamore trees (Mutsun language: *maar*)— In Mutsun traditions, the sycamore is a spiritually and culturally significant tree with numerous traditional uses. The Amah Mutsun Tribal Band considers intact sycamore woodlands to be important tribal cultural resources deserving of special care and protection.
- California Red-Legged Frog [3.5-34] (Mutsun language: *wakracmin*)— This is a culturally significant species for the Amah Mutsun Tribal Band, and historic tribal food resource. The DEIR simply notes that “this species has a high potential to occur within the Project

study area.” Given the status of CRLF as a threatened species, AMTB recommends surveying during the breeding period to establish a population estimate for the inundation area of the proposed new reservoir, and other areas where project impacts will occur.

In other reservoir sites in the California Central Coast region, despite the presence of bullfrogs, CRLF populations have been found in great abundance. In 2014-15 during mitigation-related frog relocation prior to the removal of the San Clemente Dam on the Carmel River, a very large population of California red-legged frogs were found to be utilizing the reservoir and many did not survive efforts to relocate them so that the reservoir could be drained (Alley, pers. communication).

- Western pond turtle (Mutsun language: *awnicmin*), a CDFW Species of Special Concern. The Western pond turtle is a culturally significant species for the Amah Mutsun Tribal Band. Despite its name, this species has a strong affinity with natural streams and canyonlands. In constructed pond and reservoir settings, competition with the aggressive, invasive Red-eared Slider and other invasive species often leads to local extirpation of pond turtles. The DEIR notes that there is approximately 681 acres of aquatic habitat, numerous areas of basking habitat, and over 1700 acres of nesting habitat for western pond turtles within the upstream and downstream areas.
- “Indian potatoes” IE *Triteleia* sp., *Calochortus* sp., *Brodiaea* sp. *Dichelostemma* sp. — Densities of these native geophytes are associated with Amah Mutsun habitation sites and traditional stewardship areas. Our ancestors, and our tribe in the present day, have worked to steward, enhance and expand populations of these important food plants, primarily within grassland and prairie settings. These native geophytes formed a significant component of the pre-contact Amah Mutsun diet. We consider any patches of these species within proximity of known village sites or archaeological sites to be potential Tribal Cultural Resources.
- Soaproot, *Chlorogalum pomeridianum* (Mutsun language: *torow*)— similarly to “Indian potatoes,” large, dense patches of soaproot are associated with village sites and may have been stewarded by Amah Mutsun ancestors. Thus we consider such patches to be potential Tribal Cultural Resources.
- Redmaids, *Calandrinia menziesii* (Mutsun language: *saapah*)— Our ancestors gathered red maids seeds in great quantities. Red maids were abundant enough under indigenous management, especially regular burning, that the people would make fist-size balls out of the tiny (1-2 millimeter), oily seeds. Residual patches of redmaids in areas where village sites or other cultural sites are known to occur are considered by our tribe to be cultural resources.

- North American river otter (*Lontra canadensis*)— In 1969, North American river otters were reportedly observed eating California floater (*Anodonta californiensis*) on Santa Ana Creek, a tributary to Tequisquita Slough (Morejohn 1969). This observation suggests that river otters were formerly present in the San Felipe Sink/Soap Lake area and tributaries, which likely included the lower portions of Pacheco Creek.

Wildlife movement: Please analyze the long-term impacts of the proposed project and the roughly 6-mile long inundation area on regional wildlife movement and dispersal.

### **Section 3.6 Biological Resources - Fisheries**

South-Central California Coast steelhead (*Oncorhynchus mykiss*), an anadromous salmonid (salmon—*huuraka* in the Mutsun language) species, is a sacred and culturally significant fish species for the Amah Mutsun Tribal Band. Mutsun oral history and the ethnographic record contain stories regarding fishing practices, which reference salmon species presumed to refer to *Oncorhynchus mykiss*. For example, in this passage the Mutsun culture bearer Ascención Solórsano de Cervantes describes a traditional fishing method that corresponds with dry season flows on streams such as Pacheco Creek, which commonly go dry over some reaches during summer and early fall.

*“When the water is already low in the rivers is the time that one can fish with one’s hands in the caves under the steep banks. I used to fish in this way almost every year in Uvas Creek and the San Benito River. In these two rivers only it was good to fish in this way because the water went down much in the summer, but the Sargent River [Pajaro River] was not good for fishing with one’s hands for the water was very deep all the time...The fish that one can catch with the hands are the suckers, the kind of trout that are called pikes, and a salmon trout or two.” (Harrington 1929)*

The Amah Mutsun Tribal Band is closely tied to the Pajaro River watershed, which roughly corresponds to the geographical extent of Amah Mutsun tribal territory. Amah Mutsun people have witnessed the continual degradation and decline of the natural water systems of the Pajaro River and its tributaries for two centuries, since Spanish colonization. The degradation of the watershed as a result of agricultural development, dam building, residential and industrial development, mining, and other impacts has led to a devastating decline in the abundance and diversity of aquatic species. The poor condition of the Pajaro River system has even received national attention, for example, in 2006 the organization *American Rivers* listed the Pajaro as America’s #1 Most Endangered River.

As indicated in the DEIR, the South-Central California Coast Steelhead DPS (distinct population segment) is federally-listed as endangered. AMTB also considers specific populations of this species, such as the Pacheco Creek population, as distinct Tribal Cultural Resources. The South-Central California Coast Steelhead population in the Pajaro River is in a dire state of decline that necessitates bold and coordinated restorative action to prevent its extirpation from the last of the Pajaro River tributaries where the species still marginally persists, including Pacheco Creek. As noted in the DEIR, the Pajaro River watershed steelhead population is identified in the ESA recovery plan as a Core 1 population, identified as the highest priority for recovery.

One of the most significant factors influencing the poor condition of South-Central California Coast Steelhead in the Pajaro River system, which the DEIR fails to discuss, is the lack of stream passage to nearly all of the high quality spawning habitat in the upper watershed. The primary impediments to passage are lack of streamflow (due to agricultural diversion and flood control related streambed modification, among other factors), and **the presence of dams that act as complete barriers to steelhead migration**. There are impassible dams on all major Pajaro tributaries including the San Benito River, Uvas Creek, Llagas Creek, and Pacheco Creek. A diversion dam on Corralitos Creek operated by the City of Watsonville frequently dewater downstream reaches, resulting in fish kills and a barrier to migration (D.W. Alley, pers. communication).

As mentioned previously, the Amah Mutsun Tribal Band is culturally obligated to take care of our plant and animal relatives and the health of our natural environment and waterways. A core aspect of the culturally-mandated vision of the Amah Mutsun Tribal Band is to restore the functioning of native ecosystems within our ancestral lands to the greatest extent possible, to bring back the beauty, abundance and diversity of the natural systems that sustained our people for thousands of years. A central aspect of that work is the restoration of natural processes in the Pajaro River watershed. Our vision of the restoration of the watershed includes restoring wetlands and sacred lakes in the San Felipe Valley and removing or bypassing dams that block the upstream migration of steelhead and Pacific lamprey (*huusu* in Mutsun language.)

In November of 2021, our tribe held a Salmon Ceremony to call for the return of the salmon to our territory, after participating in the removal of the [Mill Creek dam](#) on a tributary to San Vicente Creek in Santa Cruz County. This ceremony further strengthened our commitment to care for the salmon and steelhead and be a voice for their needs.

As previously stated in our comments in Chapter 2 (Alternatives) AMTB requests that Valley Water develop an additional alternative project that would involve the **decommissioning and removal of the existing North Fork Dam, without the construction of a new dam**. This

would allow for the restoration of natural watershed processes, including fish passage that would allow seasonal access to the historic steelhead spawning grounds of the North Fork and South Fork of Pacheco Creek. Without the North Fork Dam water diversion (or a new diversion, as represented by the Pacheco Reservoir Expansion Project), natural fluctuations in streamflow would occur, and groundwater recharge could be supported through increased efforts to restore and improve channel complexity, floodplain connectivity and riparian forest health in the mainstem of Pacheco Creek. In addition, the restoration of wetlands in the San Felipe Sink / Soap Lake basin would support groundwater recharge.

Amah Mutsun teachings instruct us to think not in terms of years, or decades, but in terms of generations. How many hundreds of generations have our Amah Mutsun ancestors witnessed steelhead spawning in the streams? We need to ensure that our relatives, the steelhead salmon, can survive for hundreds of generations to come. For this reason, we do not believe that habitat improvement solutions based on complex technologies and enormous human operated systems—such as the State Water Project infrastructure and pump stations that artificially transport water over the mountains— are truly sustainable in the long term. If the steelhead are made to adapt to be dependent on artificial stream conditions with imported water, what will happen when those water deliveries inevitably come to a halt?

Page 3.6-12: “Currently, there is no fish monitoring program in the Pajaro watershed.”

Please correct this statement in the DEIR. An [annual steelhead survey at the Pajaro Lagoon](#) is conducted by the the Santa Cruz County Flood Control and Water Conservation District Zone 7, performed in September or October of each year by D.W. Alley & Associates. Other fish monitoring programs have previously been implemented on the Pajaro River tributaries of [Corralitos/Browns Creek](#) and Uvas Creek and may still be active.

Impact Fish-1: Substantial adverse effect, either directly or through habitat modifications for special-status native resident fish species in upper North Fork Pacheco Creek. Page 3.6-29 under *Operations* states that:

*“The expanded reservoir under the Proposed Project would result in a larger area of inundation compared to the existing and future baselines, thereby reducing the amount of riverine habitat upstream from the new dam available to Monterey roach by approximately **7.7 miles**, leaving 8.4 miles of intermittent creek habitat upstream from the expanded reservoir. Because much of North Fork Pacheco Creek is frequently dry (see Section 3.12.1) with limited habitat for Monterey roach, operations of the expanded reservoir would result in less-than-significant impacts because impacts on special-status native resident fish species and their habitat would not be substantial.”*

The loss of **7.7 miles of riverine habitat** upstream of the existing Pacheco Reservoir is a potentially significant impact of the proposed Project, which the DEIR does not adequately analyze. Please explain the basis for stating that North Fork Pacheco Creek is “frequently dry with limited habitat for Monterey roach.” Has a recent survey been conducted by a qualified fisheries biologist of North Fork Pacheco Creek and the 7.7 mile reach that would be inundated by the proposed reservoir?

In 3.6.1.1, North Fork Pacheco Creek is characterized as a “16-mile-long intermittent stream with portions that contain surface water year-round,” and these “pools with perennial surface water have been found to harbor native fish species including Sacramento sucker (*Catostomus occidentalis*), Monterey roach (*Lavinia symmetricus*), prickly sculpin (*Cottus asper*)...” Furthermore, the description of the Pacheco Reservoir on page 3.6-3 states that although the reservoir goes completely dry roughly one in every four years, it is recolonized by fish that remain in perennial sections of North Fork Pacheco Creek upstream and its tributaries.

Taken together, these factors indicate that habitat quality and quantity in North Fork Pacheco Creek is sufficient to support self-sustaining populations of the three native fish species listed above, and potentially others. Without a survey program having been carried out along North Fork Pacheco Creek, there does not appear to be a clear basis to claim that impacts on special-status native resident fish species and their habitat would not be substantial, as a result of a loss of 7.7 miles of habitat.

The fact that much of North Fork Pacheco Creek is “frequently dry” does not indicate poor habitat quality, but rather describes the typical character of streams in this section of the Diablo Range. It is these very stream conditions that South-Central California Coast Steelhead are uniquely adapted to. The DEIR describes North Fork Pacheco Creek as “largely unimpaired. Stream substrates are mostly alluvial and primarily contain boulders, cobbles, and gravels...The floodplain is primarily unconfined in the lower and middle sections of the creek; however, there are points where the channel is naturally confined by the surrounding topography. Some of these confined sections occur over bedrock which create pools that can persist throughout the year.” This description suggests potential quality spawning habitat for steelhead in North Fork Pacheco Creek.

The discussion of impacts to South-Central California Coast Steelhead in section 3.6.3.4 repeatedly asserts that potential adverse changes to habitat conditions “would result in less-than-significant impacts because impacts on special-status native resident fish species and their habitat would not be substantial.” Please provide more detail in these instances to support the conclusion that impacts to habitat would not be substantial.

In our view, in the context of a critically endangered species that is on a downward trajectory and barely extant within the area of a proposed project (Pacheco Creek,) even small detrimental impacts have the potential significantly affect a population. Many small detrimental

impacts considered together can further increase the risk of harm. Examples of such potentially detrimental impacts to South-Central California Coast Steelhead resulting from the proposed project include the introduction of new non-native predatory species from the delta ecosystem that are known to consume steelhead fry, and the alteration of water sources for streamflows in Pacheco Creek through the artificial introduction of waters from the Central Valley via pumping plants. This change in water characteristics which steelhead have imprinted on, could lead to confusion and further challenges for up-migrating spawning phase steelhead.

#### 3.6.3.6 Cumulative Impacts

AMTB recommends expanding the discussion of cumulative impacts to special status fish species and South-Central California Coast steelhead in particular to include other relevant past, present and foreseeable future projects within the greater Pajaro River watershed. For instance, this discussion could include a consideration of the cumulative impacts to steelhead of the damming of all of the major tributaries of the Pajaro watershed including Pacheco.

### **Chapter 2.4.3— Alternatives to the Proposed Project**

From the perspective of the Amah Mutsun Tribal Band, the four alternative projects analyzed in the DEIR are not sufficiently or meaningfully distinct from the proposed project and thus **do not constitute a reasonable range of alternatives** which would limit or reduce significant impacts. All four alternative projects would impact Tribal Cultural Resources in a very similar manner; only Alternative B and Alternative C would somewhat lessen project impacts to TCRs, each impacting 26 TCRs rather than the 29 TCRs that would be harmed by the primary project. However, alternatives B and C would both impact the same amount of known locations of human remains as the project and other alternatives, and both would impact the most culturally and archaeologically significant identified TCRs (based on current knowledge) in the same manner as the other plans, resulting in the same overall array of Significant and Unavoidable Impacts.

While section ES-9 of the DEIR identifies Alternative C as the “Environmentally Superior Alternative,” this alternative is not superior from the Amah Mutsun viewpoint in light of the fact that it does not significantly reduce project impacts to known Tribal Cultural Resources.

**AMTB requests that Valley Water develop additional Alternatives that would accomplish the primary project objectives, without the construction of a new dam and reservoir on Pacheco Creek.** And specifically, as discussed above, in Section 3.6, AMTB requests that Valley Water develop an additional alternative project that would involve the decommissioning and removal of the existing North Fork Dam and restoring habitat for SCCC steelhead, and

identifying an alternative strategy for meeting regional water demands without the construction of a new dam on Pacheco Creek.

AMTB understands that Valley Water has invested considerable resources into the process of planning for and evaluating the proposed Pacheco Reservoir Expansion Project, and that there would be costs associated with changing course and pursuing alternative strategies for meeting regional water supply needs that do not involve a new reservoir at Pacheco Creek. However, we believe changing course would be the most appropriate action to consider now, in light of what has now become known about the significance of Tribal Cultural Resources in the proposed project area. We do not believe it is fair or just to ask our tribal community and our Amah Mutsun ancestors to pay the incalculable price of desecration and loss that this project would represent. A 21st century water supply solution need not be predicated on the further displacement of Indigenous peoples from our sacred sites.

We appreciate Valley Water's efforts to consult with our tribe, and the responsiveness of Valley Water to concerns and requests we have raised to date. Nevertheless, we remain extremely concerned about the irreparable destructive impacts of the Pacheco Reservoir Expansion Project to our Tribal Cultural Resources including sacred sites, ceremonial sites, rock art sites and ancestral burial sites. Our tribe will continue to engage in an in-depth review of all aspects of the proposed project and the findings of ongoing archeological and ethnographic survey and research efforts in which we are participating, and continue to engage in good faith consultation with Valley Water.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Valentin Lopez". The signature is fluid and cursive, with a large initial "V" and a long, sweeping tail.

Valentin Lopez  
Chair, Amah Mutsun Tribal Band