

February 14, 2022

Mr. Todd Sexauer  
Santa Clara Valley Water District (PachecoExpansion@valleywater.org)  
5750 Almaden Expressway  
San Jose, California 95118

Subject: Pacheco Reservoir Expansion Project

Dear Mr. Sexauer:

Here are my comments on the proposed Pacheco Reservoir Expansion Project. They are based on (1) *Pacheco Reservoir Expansion Project Draft Environmental Impact Report State Clearinghouse #2017082020* November 2021 (DEIR) prepared by the Santa Clara Water District, San Jose, California; (2) *Draft Environmental Impact Report Appendix Biological Resources-Botanical/Wildlife Pacheco Reservoir Expansion Project* November 2021 (ADEIR); (3) *Final Santa Clara Valley Habitat Conservation Plan, Santa Clara County, California* dated 2012 by the County of Santa Clara, City of San Jose, City of Morgan Hill, City of Gilroy, Santa Clara Valley Water District, and Santa Clara Valley Transportation Agency; and (4) other information available to me.

As a background, I was a Senior Scientist in the Endangered Species Program at the Center for Biological Diversity from 2018-2020. Prior to the Center, I worked for 27 years for the U.S. Fish and Wildlife Service from 1989 to 2016 administering and enforcing the Endangered Species Act of 1973, as amended (ESA, Act), in several positions ranging from endangered species entomologist to Deputy Assistant Field Supervisor. While stationed at the Sacramento Field Office I regulated the effects of development and other activities on the threatened California red-legged frog (*Rana draytonii*), threatened California tiger salamander (*Ambystoma californiense*), endangered least Bell's vireo (*Vireo pusillus bellii*), and other listed species found within Santa Clara County. I worked for several years in the mid-1980s as a Research Associate in the Entomology Section at the Natural History Museum of Los Angeles County. I have a master's degree from the Yale University School of Forestry and Environmental Studies.

In general, both the DEIR and ADEIR are confusing, lack clarity and/or specificity, and often omit, downplay or even misrepresent special status species in the project area, adverse effects, and avoidance measures, mitigation, and conservation measures on imperiled, sensitive species, and species that are listed on the ESA and the designated critical habitat for the threatened California red-legged frog. The tables of effects and mitigations are often difficult to understand or interpret; and appropriate maps of habitats and locations of plants and animals are either not included or presented in such a manner as to render them less than useful.

There are a number of inaccuracies and inadequacies in the DEIR and ADEIR, however, my comments address 9 major deficiencies and information required for an adequate analysis of impacts of the proposed project on listed, imperiled and sensitive species and their habitats, and designated critical habitat: (1) The DEIR and ADEIR misinterpret and misrepresent the biology, ecology and distribution of a number of federally listed, imperiled and sensitive species; (2) The proposed Pacheco Reservoir Expansion Project likely would result in adverse effects to and take of federally listed species; (3) The destruction or loss of a movement corridor for federally listed, imperiled and sensitive species is incorrectly analyzed in the DEIR and ADEIR; (4) Analysis of the adverse effects and destruction of designated critical habitat for the California red-legged frog in the DEIR and ADEIR is inadequate; (5) Analysis of the adverse effects on the threatened California tiger salamander is inadequate and not supported by the information in the DEIR and ADEIR; (6) Analysis of the adverse effects on the endangered least Bell's vireo is inadequate and not supported by the information in the DEIR and ADEIR; (7) The proposed mitigations and conservation measures for federally listed, sensitive and imperiled species in the DEIR and ADEIR are vague and lack any meaningful way to determine if they are effective or even implemented; (8) The analysis and mitigations for the indirect and cumulative effects of the proposed Pacheco Reservoir expansion on federally listed species in the DEIR and ADEIR are inadequate; and (9) Other general comments.

**(1) The DEIR and ADEIR misinterpret and misrepresent the presence, effects, and mitigations of a number of federally listed, imperiled and sensitive species**

Based on the information contained in the DEIR and ADEIR, it is extremely difficult or not possible to assess the presence or absence and status of a number of listed, imperiled, and sensitive species at the proposed Pacheco Reservoir Expansion, and therefore, determine the adverse effects and appropriate mitigations and conservation measures. Species-specific and/or USFWS/CDFW protocol-level surveys by qualified biologists were apparently not conducted or completed for many special status plants and animals.

The DEIR and ADEIR dismiss the presence, effects and need for avoidance or mitigation measures for a number of plants and animals because there are no records of them at the Pacheco Reservoir Expansion in the California Department of Fish and Wildlife's (CDFW) Natural Diversity Data Base (CNDDDB). However, the CDFW (undated) specifically states

It "...is a positive sighting database. It does not predict where something may be found. We map occurrences only where we have documentation that the species was found at the site. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present."

The DEIR and ADEIR make conclusions regarding the presence or absence of a number of listed, proposed, imperiled, and sensitive species (and two species not included in the DEIR and ADEIR) which may be affected by the Pacheco Reservoir Expansion based on records or no records in the CNDDDB, surveys of unclear geographic extent, intensity and duration, species

distribution, and presence or absence of suitable habitat. Often, neither the DEIR and ADEIR fail to include literature citations of published scientific articles, appropriate reports (“gray literature”) or other scientific information to support conclusions regarding distribution and/or habitat suitability. The Final Santa Clara County Habitat Conservation Plan (County of Santa Clara *et al.* 2012) and other publications contain this information including Thomson *et al.* (2016), Eriksen and Belk (1999).

The special status species included in the DEIR and ADEIR (except for 2 marked with \*) for whom the information in these two documents are insufficient for assessing their presence at the Pacheco Reservoir Expansion, effects from the project, and appropriate mitigations are the threatened vernal pool fairy shrimp (*Branchinecta lynchi*), endangered vernal pool tadpole shrimp (*Lepidurus packardii*), western bumble bee (*Bombus occidentalis*), Crotch’s bumble bee (*Bombus crotchii*), California Species of Concern grasshopper sparrow (*Ammodramus savannarum*), California Species of Concern loggerhead shrike (*Lanius ludovicianus*), California State Threatened tricolored blackbird (*Agelaius tricolor*), California Species of Concern yellow-breasted chat (*Icteria virens*), California Species of Concern yellow warbler (*Setophaga petechia*), California Species of Concern purple martin (*Progne subis*), California Species of Concern short-eared owl (*Asio flammeus*), California Species of Concern long-eared owl (*Asio otus*), California Species of Concern burrowing owl (*Athene cunicularia*), California State Fully Protected golden eagle (*Aquila chrysaetos*), Swainson’s hawk (*Buteo swainsoni*), northern harrier (*Circus cyaneus*), California Threatened white-tailed kite (*Elanus leucurus*), endangered California condor (*Gymnogyps californianus*), California State Candidate mountain lion (*Felis concolor*), endangered San Joaquin kit fox (*Vulpes macrotis mutica*), California Species of Concern American badger (*Taxidea taxus*), California Fully Protected ringtail (*Bassaricus astutus*), California Species of Concern pallid bat (*Antrozous pallidus*), California Species of Concern Townsend’s big-eared bat (*Corynorhinus townsendii*), California Species of Concern western mastiff bat (*Eumops perotis californicus*), California Species of Concern western big-eared bat (*Lasiurus blossevillei*), Proposed Threatened foothill yellow-legged frog (*Rana boylei*), California Species of Concern western pond turtle (*Emys marmorata*), California Species of Concern western spadefoot toad (*Spea hammondi*), California Species of Concern silvery legless lizard (*Anniella pulchra*), California glossy snake (*Arizona elegans occidentalis*)\*, California Species of Concern San Joaquin coachwhip snake (*Masticophis flagellum ruddocki*), two-striped garter snake (*Thamnophis hammondi*)\*, and California Species of Concern coast horned lizard (*Phrynosoma blainvillii*).

The DEIR states although suitable habitat is present at the proposed Pacheco Reservoir Expansion area, there is low potential for the western bumble bee and Crotch’s bumble bee to occur at the site. Both of these species were petitioned for listing on the California Endangered Species Act. They have undergone a dramatic decline throughout their ranges (Williams *et al.* 2014; Thorp *et al.* 1983). Apparently, no surveys for either species were completed by a qualified entomologist. The Santa Clara Valley Water District should ensure adequate surveys for both of these animals are conducted by a qualified entomologist. It is important the surveys are conducted by a qualified entomologist with field experience with bumble bees as these animals may be extremely difficult or impossible for untrained biologists to locate (Nagano *et*

*al.* 1981). If either of the bumble bees are located at the site the District should ensure the results of the protocol surveys, analyses of effects, and mitigations are incorporated into the final CEQA documents.

According to the County of Santa Clara *et al.* (2012), the endangered San Joaquin kit fox has been observed in Henry W. Coe State Park. The presence and effects on the San Joaquin kit fox from the proposed Pacheco Reservoir Expansion along with the appropriate mitigations and ESA authorizations should be fully resolved prior to certification of the final CEQA documents.

The Santa Clara Valley Water District should complete surveys for listed, imperiled, and sensitive plant species in all suitable habitats at the Pacheco Reservoir Expansion and areas that may be affected by the proposed project, including adjacent or nearby properties, and areas subject to indirect effects. The surveys should be carried out according to the California Department of Fish and Wildlife's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (California Department of Fish and Wildlife 2018). The District should ensure the results of the protocol surveys, analyses of effects, and mitigations are incorporated into the project. The presence and effects on listed, imperiled, and sensitive plant species from the proposed Pacheco Reservoir Expansion along with the appropriate mitigations and ESA authorizations should be fully resolved prior to certification of the final CEQA documents.

The proposed threatened foothill yellow-legged frog has been proposed for ESA threatened status (U.S. Fish and Wildlife Service 2021). It has been recorded from southern Santa Clara County (County of Santa Clara *et al.* 2012; Thomson *et al.* 2016). Adequate surveys for it conducted by a qualified herpetologist(s) and effects from the proposed Pacheco Reservoir Expansion along with the appropriate mitigations and appropriate ESA review (section 7 biological conference) should be fully resolved prior to certification of the final CEQA documents.

Species specific surveys should be conducted for the special status species following USFWS or CDFW protocols, when available, or by a qualified biologist(s) with documented expertise with the species if protocol survey guidelines are not available. (note: USFWS protocol surveys for vernal pool crustaceans and plants should be completed in alkali weed, salt grass playa, pale spike rush marshes, and within any temporary pools formed in rock outcrops). If any of these species are located, the Santa Clara Valley Water District should ensure the methods and results of the surveys, analyses of effects, and the mitigations are fully described and precisely document how they will be implemented in the final CEQA documents. This should include the precise locations of any sightings of special status species especially listed and proposed species, and their habitats clearly overlaid on maps of the proposed Pacheco Dam Expansion and action area at a scale of 1 inch = 300 feet and 1 inch = 900 feet.

**(2) The proposed Pacheco Dam Expansion Project likely would result in adverse effects to federally listed species**

Section 9 of the ESA prohibits the take of the vernal pool fairy shrimp, vernal pool tadpole shrimp, San Joaquin kit fox, least Bell's vireo, California red-legged frog, California tiger salamander, and other federally listed animals by any person subject to the jurisdiction of the United States. Protection for the California red-legged frog and the California tiger salamander does not apply if an animal is taken during the course of routine ranching activities, as defined in the section 4(d) rules for these species (USFWS 2004, 2006).

The term "person" is defined in the ESA as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States. As defined in the ESA, take is "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Harass means an intentional or negligent act or omission which creates the likelihood of injury to a listed animal by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to breeding, feeding, or sheltering. Harm has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, listed animals are protected from such activities as collecting and hunting, but also from activities that result in their death or injury due to damage or destruction of their habitat.

The ESA prohibits activities that "...remove and reduce to possession any listed plant from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the activity or project, and a listed species is going to be adversely affected, then initiation of formal consultation between that agency and the U.S. Fish and Wildlife Service or National Marine Fisheries Service pursuant to section 7 of the ESA is required. Such consultation would result in a biological opinion addressing the anticipated effects of the action to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved with the action or project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a)(1)(B) of the ESA should be obtained. The US Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, may issue the permit upon completion and submission of an adequate habitat conservation plan for listed species that may be taken by the action.

Since it appears the Bureau of Reclamation and/or the U.S. Army Corps of Engineers would be involved with the Pacheco Reservoir Expansion, section 7 of the ESA may be the most appropriate course for this project.

**(3) The destruction or loss of a movement corridor for federally listed species, and several imperiled and sensitive species is incorrectly analyzed in the DEIR and ADEIR**

The on-going loss and reduction in natural habitats and movement corridors for listed species and wildlife in this region of California has long been a concern (Spencer *et al.* 2010; County of Santa Clara *et al.* 2012). The proposed project would eliminate or significantly reduce the amount and quality of natural habitat utilized by a wide variety of animals for resting, feeding, breeding, and long-distance movement including the threatened California red-legged frog, threatened California tiger salamander, black-tailed deer (*Odocoileus hemionus*), mountain lion, bobcat (*Lynx rufus*), American badger, and elk (*Cervus elaphus*)

Spencer *et al.* (2010) identified the immediate area where the Pacheco Reservoir Expansion would be located as a part of a Natural Landscape Block which is a draft Essential and Important Area and a Critical Linkage Planning Area for long distance and long term movement of animals.

The substantial expansion of the surface area of water due to the Pacheco Reservoir, Expansion, concomitant destruction of riparian and other suitable habitat by project construction, alteration of essential behaviours such as feeding, resting and mating caused by increased night lights, roadkill and behavioural disturbance from vehicles and humans utilizing the access and utility areas, combined with heavy high speed vehicle traffic on the existing State Route 152 to the south, and the barrier of San Luis Reservoir to the east would eliminate or significantly reduce the ability of the California red-legged frog, other listed animals and wildlife to move through the Pacheco Pass, specifically, east and west north of State Route 152, and north and south across State Route 152.

The Final Santa Clara County Habitat Conservation Plan (HCP)(County of Santa Clara *et al.*, 2012) indicates the proposed project is located in a potential landscape link area (Figure 5-6 of the HCP) and there are three crossing points for wildlife across SR-152 south of Pacheco Dam (Figure 5-96 in the HCP). The loss or even a reduction of the ability of the listed California red-legged frog and wildlife to successfully cross over both the short and long term in east-west directions due to the substantial expansion of the surface area of Pacheco Reservoir, and north-south across SR-152 would have significant impacts. The Santa Clara Valley Water District should analyze the effects of the proposed project on the movement of listed species and wildlife, and precisely describe appropriate avoidance and mitigation measures and how and when they will be fully implement in the final CEQA documents.

The proposed Pacheco Reservoir Expansion almost certainly would result in take of the threatened California red-legged frog. This listed species does not have distinctive breeding migration (Dodd 2013; Green *et al.* 2013; Fellers 2005). Adults are often associated with permanent bodies of water. Some frogs remain at breeding sites all year while others disperse. Dispersal distances are typically less than 0.5 mile, however, some individuals have been known to move up to 2 miles (Bulger *et al.* 2003; Fellers 2005). Movements are typically along riparian corridors, but some individuals, especially on rainy nights, move directly from one site to another through normally inhospitable habitats, such as grazed pastures or oak-grassland savannas (Fellers 2005). Fellers and Kleeman (2007) and Bulger *et al.* (2003) found that California red-legged frog movement corridors may be less than “pristine” (e.g., closely grazed fields, areas with mature crops, plowed agricultural lands) than breeding or non-breeding habitats. Bulger *et al.* (2003) observed that this listed species did not avoid or prefer any landscape feature or vegetation type.

The proposed project is located within designated critical habitat unit STC-2 for the California red-legged frog (USFWS 2010). The critical habitat’s Primary Constituent Elements (PCEs) are aquatic breeding habitat, aquatic non-breeding habitat, upland habitat, and dispersal habitat (USFWS 2010). Some or all of the PCEs would be adversely affected by the proposed project, although the DEIR and ADEIR lack the specificity to determine their level of effects, locations with any degree of precision.

Given the information contained in the ADEIR, the Santa Clara Valley Water District should assume all undeveloped habitats in the Pacheco Reservoir Expansion provide suitable breeding, dispersal areas, and upland refugia habitat for the California red-legged frog. The District adequately describe the appropriate mitigation and conservation measures, including habitat compensation of lands documented to be occupied by the animal that will replace the biological functions for the creature provided by the existing critical habitat unit STC-2 including habitat compensation at a minimum 3:1 ratio along with an approved management plan funded in perpetuity based on a PAR; and obtain authorization for incidental take for this listed animal via ESA section 7 or 10(a)(1)(B), as appropriate.

The Santa Clara Water District should precisely identify and map the locations of PCEs, analyze the effects on them from the project, and explain how the Pacheco Dam expansion project will not result in adverse effects or destruction of California red-legged frog critical habitat or implement measures that will avoid them in the final CEQA documents.

**(5) Analysis of the adverse effects on the threatened California tiger salamander is inadequate and not supported by the information in the DEIR and ADEIR**

The DEIR and ADEIR state there is a high potential for the California tiger salamander to occur in the proposed Pacheco Reservoir Expansion, however, the analysis of its status, adverse effects and mitigations in the project action area are absent or inadequate.

The California tiger salamander is known to travel long distances between its breeding ponds and its upland refugia within ground squirrel, and likely gopher and vole burrows (Shaffer and Trenham 2005). Generally, it is difficult to establish the maximum distances traveled by any species, but California tiger salamanders in Santa Barbara County have been record dispersing up to 1.3 miles from their breeding ponds (USFWS 2004). As a result of a 5-year capture and relocation study in Contra Costa County, Orloff (2007) estimated that captured individuals were traveling a minimum of 0.5 mile to the nearest breeding pond and some individuals likely were traveling more than 1.3 miles to and from breeding ponds. California tiger salamanders also are known to travel between breeding ponds. One study found that 20 to 25 percent of the individuals captured at one pond were recaptured later at other ponds approximately 1,900 feet and 2,200 feet away (Trenham *et al.* 2001). In addition to traveling long distances during juvenile dispersal and adult migration, California tiger salamanders may reside in rodent burrows far from their associated breeding ponds.

Given the information contained in the DEIR and especially the ADEIR, the Santa Clara Valley Water District should assume all undeveloped habitats in the Pacheco Reservoir Expansion provide suitable breeding, dispersal areas, and upland refugia habitat for the California tiger salamander (except for open water habitat in the existing Pacheco Lake). The District should adequately describe the appropriate mitigation and conservation measures, including habitat compensation documented to be occupied by the animal at a minimum 3:1 ratio along with an approved management plan funded in perpetuity based on a PAR in the final CEQA documents; and obtain authorization for incidental take for this listed animal via ESA section 7 or 10(a)(1)(B), as appropriate prior to finalization of the CEQA documents.

#### **(6) Adequate surveys should be completed for the endangered least Bell's vireo**

The proposed project and its action area lies within the range of the endangered least Bell's vireo (Service 1998; California Department of Fish and Game 2008a, 2008b). Riparian habitat is present within the Pacheco Reservoir Expansion, although it is not possible to ascertain the presence or absence of this listed species based on the vague information and apparently incomplete/lack of protocol surveys contained in the DEIR and ADEIR. Least Bell's vireos have been documented in nearby Coyote Creek (2006), and Llagas Creek (1997 and 2001)(California Department of Fish and Wildlife 2008a, 2008b). This endangered species has been recorded successfully nesting in the San Joaquin National Wildlife Refuge (Howell *et al.* 2010). All of these records suggest the least Bell's vireo could be inhabiting and possibly breeding within the action area.

Given the inadequate information on the least Bell's vireo contained in the DEIR and ADEIR, the Santa Clara Valley Water District should complete protocol-level surveys and habitat assessments for this listed species at the Pacheco Reservoir Expansion, as described in the USFWS January 19, 2001, Least Bell's Vireo Survey Guidelines (USFWS 2001). If the bird is found to utilize the Pacheco Reservoir Expansion, the effects of the project on this listed species and its habitat should be adequately analyzed, appropriate avoidance, mitigation and conservation measures should be described including precisely how they will be implemented,

including habitat compensation documented to be occupied by the animal at a minimum 3:1 ratio along with an approved management plan funded in perpetuity based on a PAR; and obtain authorization for incidental take via ESA section 7 or 10(a)(1)(B), as appropriate prior to completion of the final CEQA documents.

**(7) The proposed mitigations and conservation measures for federally listed species, sensitive and imperiled species in the DEIR and ADEIR are vague and lack any meaningful way to determine if they are effective or even implemented**

The proposed project should implement the appropriate mitigation measures for each adversely impacted special status species. The Santa Clara Valley Water District should ensure the final CEQA documents for the Pacheco Reservoir Expansion contain the specific dates, who will implement and maintain them, qualifications of biological monitors, actions and notification that would be taken if they are not implemented or fail, allow readily apparent determination if they have been implemented, and are documented on a public accessible website.

The Pacheco Reservoir Expansion is located within the service area of the Santa Clara County Habitat Conservation Plan (County of Santa Clara *et al.*, 2012), although it apparently is not a covered activity. It is not appropriate to amend this project to the HCP given its significant impacts on a wildlife movement corridor in an area where there are relatively few locations for animals to safely cross a major roadway.

**(8) The analysis and mitigations for the indirect effects of the proposed Pacheco Reservoir expansion on federally listed species in the DEIR and ADEIR are inadequate**

50 CFR § 402 defines “action area” for ESA listed species and designated critical habitat as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” Note that in the case of the Pacheco Reservoir Expansion, Federal action includes involvement by the U.S. Army Corps of Engineers, Bureau of Reclamation, or other permitting, funding, or otherwise carrying out of an action by a Federal agency.

The ESA action area as defined in the DEIR and ADEIR is incorrect because it does not include the lands adjacent to or in the immediate vicinity of Pacheco Reservoir Expansion that will be subject to indirect and cumulative effects, and also the areas that will receive water for development and agriculture that would not otherwise be available to them. The Santa Clara Valley Water District should analyze the indirect and cumulative effects of the project on listed species and critical habitat, as the ESA action area is certain to be far larger than described and analyzed in the DEIR and ADEIR. If any ESA listed or proposed species and/or designated critical habitat will be adversely affected, the District complete section 7 or 10(a)(1)(B), as appropriate. The ESA process should be completed prior to certification of the CEQA documents.

If projects, including issuance of development or agricultural permits, plan amendments, zoning changes, which will require water from the Pacheco Reservoir Expansion and either are

submitted or proposed to the relevant jurisdiction, it may be appropriate to advise them in writing that they will need to provide documentation they have completed the ESA process. Evidence could be in the form of a letter of concurrence from the U.S. Fish and Wildlife Service containing a “may affect, not likely to adversely affect” determination or “no take” conclusion, or a biological opinion or section 10(a)(1)(B) permit issued by this Agency.

### **(9) General comments**

To eliminate confusion as to if, where, and when they would result from the Pacheco Reservoir Expansion, the definitions of no impacts/effects; short-term impacts (=temporary impacts/effects) and long-term impacts (=permanent impacts/effects) on listed, proposed, imperiled, and sensitive species in the DEIR and ADEIR should be defined and analyzed as: (1) No impacts/effects= Project actions result in no direct, indirect, or cumulative adverse effects or impacts to special status species and/or their habitats, including but not limited to erosion, siltation, noise, oil or chemical spills, night lighting, road kill, increased human use of area; (2) Temporary effects/impacts = Habitat disturbed, damaged, or destroyed by the proposed project that will be restored/enhanced to baseline or higher habitat values within twelve (12) months of the date of initial disturbance; (2) Permanent effects/impacts= Habitat disturbed, damaged, or destroyed by the proposed project that will not/cannot be restored/enhanced to baseline or higher habitat values within twelve (12) calendar months of the date of initial disturbance

Table 3.5-6 of the DEIR contains a list of sensitive natural communities and riparian habitats and the acreages that would be impacted “...in the proposed project inundation or construction area.” Impacts to some of these communities and habitats are substantial in size and virtually certain to be permanent effects. The DEIR contains lists of potential locations that may be protected via conservation easement, however, it appears these mitigations are uncertain, may or may not be equivalent or greater biological value than the impacted (=damaged or destroyed) on-site habitats, lack any meaning details, and are an unabashed conservation version of “the check’s in the mail.” Especially key is how the proposed site(s) will mitigate for the loss of existing habitats at the proposed project. The Santa Clara Valley Water District should resolve this issue, including ensuring sites with habitat of equal or greater biological value at a ratio of at least 3:1 will be held in fee-title or conservation easement by an agency or private organization with a demonstrated record of successful habitat management, complete adequate management plans for the mitigation lands including in-perpetuity funding based on an adequate PAR.

The Santa Clara Valley Water District should provide the precise locations and delineations of all habitats clearly overlaid on maps of the proposed Pacheco Reservoir Expansion and action area at a scale of 1 inch = 300 feet and 1 inch = 900 feet.

If the USFWS authorizes incidental take for any or all of the listed species, the Santa Clara Valley Water District should incorporate the *Conservation Measures* and *Reasonable Prudent and*

*Measures* from the section 7 biological opinion or permit conditions from a section 10(a)(1)(B) permit into the appropriate permits and contracts.

Conclusion

The DEIR and ADEIR lack the level of specificity that would enable an adequate analysis of the effects and effectiveness of mitigations of the proposed Pacheco Reservoir Expansion on federally listed species, designated critical habitat, imperiled and sensitive species and their habitats. However, based on the incomplete information contained in the DEIR and ADEIR, the proposed project is almost certain to have substantial impacts on imperiled and sensitive species, and would result in take of federally listed species and adverse effects to designated critical habitat as defined in the ESA. The Santa Clara Valley Water District should suspend or hold the CEQA process in abeyance until these issues are fully resolved.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Chris Nagano". The signature is written in a cursive, flowing style.

Christopher D. Nagano

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916/765-9097

## Literature Cited

Bulger, J.B., N.J. Scott, and R.N. Seymour. 2003. Terrestrial activity and conservation of adult California red-legged frogs *Rana aurora draytonii* in coastal forests and grasslands. *Biological Conservation* 110(2003): 85-95.

California Department of Fish and Wildlife (aka California Department of Fish and Game). 2008a. California Natural Diversity Data Base. RAREFIND. Natural Heritage Division, California Department of Fish and Game, Sacramento, California.

\_\_\_\_\_. 2008b. BIOSIS. Natural Heritage Division, California Department of Fish and Game, Sacramento, California.

\_\_\_\_\_. 2018. Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities. Sacramento, California.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959> accessed February 9, 2022

California Natural Diversity Data Base. Undated. CNDDDB data use guidelines. California Department of Fish and Wildlife, Sacramento, California. 12 pages  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=27285&inline> Accessed February 9, 2022.

County of Santa Clara, City of San Jose, City of Morgan Hill, City of Gilroy, Santa Clara Valley Water District, and Santa Clara Valley Transportation Agency. 2012. Final Santa Clara Valley Habitat Conservation Plan, Santa Clara County, California.

Dodd, C.K. 2013. Frogs of the United States and Canada. Volume 2. John Hopkins University Press, Baltimore, Maryland.

Eriksen, C., and D. Belk. 1999. Fairy shrimps of California's puddles, pools, and playas. Mad River Press, Eureka, California

Fellers, G. 2005. *Rana draytonii* Baird and Girard, 1852. California red-legged frog. Pages 552-554 in M. Lannoo (editor). Amphibian declines the conservation status of United States species. University of California Press, Berkeley, California.

Fellers, G., and P.M. Kleeman. California red-legged frog (*Rana draytonii*) movement and habitat use: implications for conservation. *Journal of Herpetology* 41(2): 271-281.

Fiehler, C., M. Ball, and B.L. Cypher. 2010. Avian species surveys of the riparian areas of the Wind Wolves Preserve, California. Endangered Species Recovery Program, California State University, Stanislaus, Turlock, California.

- Green, D.M., L.A. Weir, G.S. Casper, and M.J. Lannoo. 2013. North American amphibians distribution and diversity. University of California Press, Berkeley, California.
- Howell, C.A., J.K. Wood, M.D. Dettling, K. Griggs, C.C. Otte, L. Lina, and T. Gardali. 2010. Least Bell's vireo breeding records in the Central Valley following decades of extirpation. *Western North American Naturalist* 70(1):105-113
- LeBuhn, G. 2013. Field guide to the common bees of California. University of California Press, Berkeley, California.
- Nagano, C.D., C.L. Hogue, R.R. Snelling, and J. Donahue. 1981. The insects and related terrestrial arthropods of Ballona. *In* R.W. Schreiber (editor). The biota of the Ballona region, Los Angeles County. Natural History Museum of Los Angeles County, Los Angeles, California.
- Orloff, S. 2007. Migratory movements of California tiger salamanders in upland habitat – a five-year study, Pittsburg, California. Ibis Environmental, San Rafael, California.
- Shaffer, H.B. and P. Trenham. 2005. *Ambystoma californiense* Gray, 1853 California tiger salamander. Pages 605-608 *in* M. Lannoo (editor). Amphibian declines the conservation status of United States species. University of California Press, Berkeley, California.
- Shuford, W.D., and T. Gardali, editors. 2008. California bird species of special concern. *Studies of Western Birds* 1: 1-450.
- Spence, W.D., P. Beier, K. Penrod, K. Wintersm C. Paulman, H. Rustigian-Romsis, J. Strittholt, M. Pairisi, and A. Pettler. 2010. California essential habitat connectivity project: a strategy for conserving a connected California. Prepared for the California Department of Transportation, California Department of Fish and Game, and Federal Highways Administration.
- Thomson, R.C., A.N. Wright, and H. B. Shaffer. 2016. California amphibian and reptile species of special concern. University of California Press, Berkeley, California
- Thorp, R.W., D.S. Horning, jr., and L.L. Dunning. 1983. Bumble bees and cuckoo bumble bees of California (Hymenoptera: Apidae). *Bulletin of the California Insect Survey* 23: 1-81
- Trenham, P., W.D. Koenig, and H.B. Shaffer. 2001. Spatially autocorrelated demography and interpond dispersal in the salamander *Ambystoma californiense*. *Ecology* 82: 3519-3530.
- U.S. Fish and Wildlife Service. 1996. Endangered and threatened wildlife and plants; determination of threatened status for the California red-legged frog. *Federal Register* 61(101):25813-25833.
- \_\_\_\_\_. 2001. Least Bell's vireo survey guidelines. Carlsbad Fish and Wildlife Office, Carlsbad, California. 3 pages.

\_\_\_\_\_ 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. Sacramento Fish and Wildlife Office, Sacramento, California.

\_\_\_\_\_ 2004. Endangered and threatened wildlife and plants; determination of threatened status for the California tiger salamander; and special rule exemption for existing routine ranching activities; final rule. Federal Register 69: 47212-47248.

\_\_\_\_\_ 2005. Revised guidance on site assessments and field surveys for the California red-legged frog. Sacramento Fish and Wildlife Office, Sacramento, California.

\_\_\_\_\_ 2006. Endangered and threatened wildlife and plants; designation of critical habitat for the California red-legged frog, and special rule exemption associated with final listing for existing routine ranching activities; final rule. Federal Register 71: 19244-19346

\_\_\_\_\_ 2010. Endangered and threatened wildlife and plants; revised designation of critical habitat for the California red-legged frog. Federal Register 75(51): 12816-12959

\_\_\_\_\_ 2021. Endangered and threatened wildlife and plants; foothill yellow-legged frog; threatened status with section 4(d) rule for two distinct population segments and endangered status for two distinct population segments. Federal Register 69: 73914-73945.

Williams, P., R. Thorp, L. Richardson, and S. Colla. 2014. Bumble bees of North America. Princeton University Press, Princeton, New Jersey. 208 pages