



Via electronic mail

February 15, 2022

Todd Sexauer, Senior Environmental Planner  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118 (408) 265-2600  
[PachecoExpansion@valleywater.org](mailto:PachecoExpansion@valleywater.org)

**Re: Pacheco Reservoir Expansion Project Draft Environmental Impact Report**

Dear Mr. Sexauer:

Guadalupe-Conservation Resource Conservation District (GCRCD) and California Trout, Inc. (CalTrout) provide these comments in response to Santa Clara Valley Water District's (Valley Water) release (November 17, 2022) of its Pacheco Reservoir Expansion Project (Project) Draft Environmental Impact Report (DEIR). We thank Valley Water for the opportunity to review and comment on the DEIR, and for extending the comment period to February 15, 2022.

### **Introduction**

We offer these comments consistent with our respective missions and goals to restore and protect environmental resources in Santa Clara County and promote environmental stewardship within California more generally. The environmental setting for the DEIR is Pacheco Creek, located in the southeastern section of Santa Clara County. The project area falls within CalTrout's Bay Area region, and Mississippi Creek, a tributary of North Pacheco Creek, has its source<sup>1</sup> within GCRCD boundaries.<sup>2</sup>

CalTrout's mission is to ensure wild, resilient fish thrive in healthy waters for a better California.

---

<sup>1</sup> USGS Geographic Names Information System; <https://edits.nationalmap.gov/apps/gaz-domestic/public/summary/228853>.

<sup>2</sup> Santa Clara Local Area Formation Commission (LAFCO); <https://sccplanning.maps.arcgis.com/apps/webappviewer/index.html?id=7d5a189b138e4aa3bea6dc0514f0b85b>.

GCRCD is a locally-led special district that has its roots in the South Bay resource conservation districts established through Division 9 of the California Public Resources code in the early 1940's. Its mission is "to provide education and technical assistance to constituents and watershed stakeholders to sustainably manage soil, water and wildlife with the best available science", and it is actively involved in the conservation and protection of agricultural and natural resources within its District and the mitigation of environmental impacts to its watersheds. The GCRCD's Board previously met with Valley Water staff regarding the Pacheco Project. Specifically, in October 2017, at a presentation to the GCRCD Board, GCRCD Director Dr. Richard Lanman, made a request to Valley Water Director Richard P. Santos and then Deputy Operating Officer-Water Supply Garth Hall, for consideration of an alternative project location on the East Fork Pacheco Creek, where a smaller reservoir might allow for the opening of up to 12 miles of steelhead habitat on the North Fork Pacheco Creek, thereby providing additional habitat for steelhead within our District.<sup>3</sup>

### **Comments**

CalTrout and GCRCD commend Valley Water for proactively seeking solutions to address anticipated domestic and agricultural water supply challenges due to climate change, unprecedented drought conditions and continued population growth. We also appreciate that one of the proposed Project's intended purposes is to provide important ecosystem benefits, such as the reestablishment of federally threatened South-Central California Coast (SCCC)<sup>4</sup> steelhead to the Pajaro watershed.

Unfortunately, the DEIR does not fully disclose the Project's environmental impacts and the likely effectiveness of proposed measures to mitigate those impacts. This is particularly concerning given that the proposed Project is being publicly funded under the Water Storage Investment Program (WSIP) based, in part, on the finding that it will provide an ecosystem improvement that meets the requirements of the Water Quality, Supply, and Infrastructure Improvement Act of 2014, California Water Code section 79753. Under the statute, ecosystem improvements must make a demonstrable contribution to "restoration of ecosystems and native fish and wildlife." Cal. Water Code § 79753(a)(1). The DEIR does not show that the proposed Project will measurably or meaningfully contribute to restoration of steelhead or other native fish and wildlife on Pacheco Creek. The California Department of Fish and Wildlife (CDFW) expressed a similar concern in its comments on the DEIR. See letter from Erin Chappell and Julie A. Vance to Todd Sexauer (Feb. 11, 2022) (CDFW's DEIR Comments), pp. 6-7.

We join in the comments on the adequacy of analysis and data relied upon in the DEIR and recommendations for further environmental review and analysis contained in CDFW's DEIR Comments, *see id.* at pp. 5-40.

---

<sup>3</sup> [https://en.wikipedia.org/wiki/North\\_Fork\\_Pacheco\\_Creek](https://en.wikipedia.org/wiki/North_Fork_Pacheco_Creek)

<sup>4</sup> <https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/south-central-california-coast-steelhead>

We also provide additional comments regarding the DEIR below. Our main concerns and recommendations can be summarized as follows:

1. The DEIR does not present the environmental analysis and findings in manner that facilitates public review and understanding of the environmental consequences of the proposed Project and alternatives.
2. The Project objectives should be stated in measurable and objective terms, not qualitatively, so that the incremental and long-term success or failure of the Project in meeting goals and statutory requirements for ecosystem improvements can be measured and clearly demonstrated to public agencies, environmental organizations, and other stakeholders.
3. The proposed Project's primary objective of "increasing suitable habitat in Pacheco Creek for federally threatened SCCC steelhead through improved water temperature and flow conditions," does not meet the standard for ecosystem improvements to be provided by projects publicly funded under the WSIP; such projects must demonstrate that they will "contribute to restoration of aquatic ecosystems and native fish and wildlife," not simply provide some unquantified improvement over baseline conditions.<sup>5</sup>
4. The DEIR should be revised to analyze a broader range of potential alternatives to potentially meet project objectives while minimizing significant environmental impacts, such as a smaller reservoir project on the east fork of Pacheco Creek.

We discuss each of these issues and recommendations in more detail below.

1. *The EIR should be revised to facilitate public review and understanding of the environmental consequences of the proposed Project and alternatives and to permit an evaluation of whether the proposed Project complies with the WSIP.*

CEQA documents should be clear and easy to understand: "EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents." 14 Cal. Code Regs § 15140. Further, EIRs should be concise: "the text of draft EIRS should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages."<sup>6</sup> The EIR should "effectively disclose to the public the 'analytic route the ... agency traveled from evidence to action.'"<sup>7</sup>

We recognize that the DEIR reflects the complexity of the proposed Project and alternatives. However, Valley Water as the lead agency has a responsibility to present complex information in a form readily understandable *by the public*.

---

<sup>5</sup> Water Code § 79753(a)(1).

<sup>6</sup> *Id.* at § 15141.

<sup>7</sup> *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 568, 801 P.2d 1161 (1990) (internal citations omitted).

The DEIR is not written in language or a format conducive to providing a clear understanding of the environmental consequences, comparative ecosystem benefits of the Proposed Project and alternatives, and proposed mitigations to the general population of stakeholders potentially impacted by this project who do not have a technical or scientific background. Stakeholders include residents, business owners and agricultural producers who may rightfully anticipate a significant economic impact from this project given its cost has risen to the billions of dollars, which apparently will be passed on in the form of higher water rates for utility and groundwater users. Those impacts will have a higher impact on those living and operating businesses in disadvantaged communities.

We request Valley Water make several changes to increase the accessibility of the DEIR to the public, including a more concise Executive Summary, additional internal cross-references to related discussions and data contained in different sections of the DEIR, and additional graphics that clearly display proposed Project impacts as compared to alternatives and anticipated implementation schedules. We also request Valley water make the online document readily searchable for key words and terms. It appears that the DEIR is not keyword searchable unless one downloads the document, either in its entirety or as separate, multiple documents. This is a technical and/or economic deterrent for those who do not have sufficient space on their own devices or who need to use shared public computers, such as at a library, to review the document.

2. *The Project objective to provide ecosystem improvements for federally threatened SCCC steelhead to Pacheco Creek must be translated into measurable and objective terms so that the success or failure of the Project in meeting its goals and mitigating its environmental impacts can be measured and clearly demonstrated to public agencies, environmental organizations, and other stakeholders.*

An EIR must include a Project description that includes a “statement of the objectives sought by the proposed project.”<sup>8</sup> The Executive Summary in the DEIR contains the following primary objective (page ES-3): *“Increase suitable habitat in Pacheco Creek for federally threatened SCCC steelhead through improved water temperature and flow conditions”* (emphasis added).

We request this objective be stated in quantitative rather than qualitative terms, and revised to include measurable objectives, such as specific and measurable flow and non-flow measures, a robust on-the-ground monitoring program, a stakeholder-driven adaptive management plan, and adequate and appropriate measures to mitigate any fishery losses associated with Valley Water’s reduction in water releases for habitat purposes in response to water supply or emergency drought conditions.

It is well-established that measurable objectives are critical to the successful mitigation of environmental impacts related to infrastructures projects that will be constructed and then operated and maintained over an extended period. The Department of Interior has described the importance of measurable objectives to adaptive management of impacted resources:

---

<sup>8</sup> 14 Cal. Code Regulations § 15124(b).

*Objectives play a critical role in evaluating performance, reducing uncertainty, and improving management over time. Clear and agreed-upon objectives are needed from the outset, to guide decision making and measure progress. To be useful, objectives should be specific, measurable within a recognizable time frame, and results-oriented (Williams et al. 2007).<sup>9</sup>*

CDFW<sup>10</sup> previously described a proposed mitigation measure in measurable terms to the California Water Commission pursuant to their technical review of the grant application:

*Steelhead Habitat*

*The Department finds that the provision of year-round reservoir releases to Pacheco Creek, targeting average monthly flows ranging from 10-20 cfs, constitutes an ecosystem improvement that meets the requirements of Water Code section 79750 et seq.*

However, based on our review, the DEIR does not include that specific term, or articulate a measurable objective in terms of what habitat and/or biological improvement that flow release is intended to achieve. For example, how would a flow release of 10-20 cfs increase the suitability of habitat (e.g., anticipated reduction in water temperature) and/or increase the amount of suitable habitat (e.g., additional acres of suitable habitat available to steelhead lifestages when they are present in Pacheco Creek)?

3. *The DEIR does not show that the proposed Project's primary objective to "[i]ncrease suitable habitat in Pacheco Creek for federally threatened SCCC steelhead through improved water temperature and flow conditions" will "contribute to the restoration of" SCCC steelhead, which is the standard for qualifying ecosystem improvements under the WSIP.*

As discussed above, the proposed Project was selected for public funding through the WSIP on the basis that it would provide a public ecosystem benefit. For purposes of the WSIP, ecosystem improvements are defined in terms of restoration, not just improvement:

"Funds allocated pursuant to this chapter may be expended solely for the following public benefits associated with water storage projects:

- (1) Ecosystem improvements, including changing the timing of water diversions, improvement in flow conditions, temperature, or other benefits *that contribute to restoration of aquatic ecosystems and native fish and wildlife ....*<sup>11</sup>

---

<sup>9</sup> Williams, B. K., and E. D. Brown, "Adaptive Management: The U.S. Department of the Interior Applications Guide. Adaptive Management Working Group, U.S. Department of the Interior, Washington, DC" (2012), p. 13 (emphasis added).

<sup>10</sup> CDFW findings to the California Water Commission; *Relative Environmental Value Of Water Storage Investment Program Projects And Department Findings* (May 23, 2018).

<sup>11</sup> Water Code § 79753(a)(1) (emphasis added).

The DEIR does not support a finding that the proposed Project's objective to increase, by some unspecified amount, suitable steelhead habitat in Pacheco Creek through improved water temperature and flow conditions, again by some unspecified increment, will "contribute to the restoration of [steelhead or] aquatic ecosystems and native fish and wildlife." In other words, the DEIR fails to demonstrate that achievement of this objective would measurably contribute to restoration of steelhead in Pacheco Creek.

If the proposed project's primary purpose is really to restore steelhead populations, the objective must be revised to relate to population goals and indicate how much habitat is needed to support a viable, self-sustaining population of steelhead in Pacheco Creek, as described above. Non-flow measures can then be designed, prioritized, and evaluated in conjunction with flow measures in specific locations to determine whether they are likely to achieve the measurable objective. For more information on the design of measures to maintain fish in good condition, we refer Valley Water to our comprehensive comments submitted for the Fish and Aquatic Habitat Collaborative Effort (FAHCE) DEIR.<sup>12</sup>

Additionally, use of population-based metrics is consistent with ESA recovery objectives for steelhead.<sup>13</sup> The Final Coastal Multispecies Recovery Plan for South-Central California Coast Steelhead (2016) (Steelhead Recovery Plan), envisions restoring self-sustaining populations at low risk of extinction:

*[NMFS'] vision is to have restored freshwater and estuarine habitats that are supporting self-sustaining, well distributed and naturally spawning salmonid populations that provide ecological, cultural, social and economic benefits to the people of California. Recovery plan objectives are to:*

1. *Reduce the present or threatened destruction, modification, or curtailment of habitat or range;*
2. *Ameliorate utilization for commercial, recreational, scientific, or educational purposes;*
3. *Abate disease and predation;*
4. *Establish the adequacy of existing regulatory mechanisms for protecting SCCC steelhead now and into the future (i.e., post-delisting);*
5. *Address other natural or manmade factors affecting the continued existence of SCCC steelhead; and*
6. *Ensure SCCC steelhead status is at a low risk of extinction based on abundance, growth rate, spatial structure and diversity.*<sup>14</sup>

---

<sup>12</sup> Minimum Viable Population Analysis (see Merz Report, Attachment 1.1 of GCRC and CalTrout's comments on the FAHCE DEIR).

<sup>13</sup> Merz Report, pp. 10-11.

<sup>14</sup> Steelhead Recovery Plan, p. 19 (emphasis added), available at <https://media.fisheries.noaa.gov/dam-migration/2016-multispecies-recovery-plan-vol4.pdf>.

Using population-based metrics to establish measurable objectives for steelhead protection and restoration is consistent with California Fish and Game Code section 5937, which will apply to any dam constructed, and requires:

“The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around, or through the dam, to keep in good condition any fish that may be planted or exist below the dam.”

Consistent with the requirement that WSIP projects provide ecosystem improvements that contribute to restoration of aquatic ecosystems and native fish, Valley Water must restate this objective in terms of measurable contribution to steelhead restoration, not just any improvement over baseline conditions for steelhead to indicate the goal is to restore steelhead to Pacheco Creek, include measurable objectives designed to meet that goal, as well as to maintain those returning populations in good condition. Valley Water must also revise and supplement the analysis in the DEIR to evaluate whether and how the proposed Project and alternatives would meet the objective of contributing to steelhead restoration on Pacheco Creek.

4. *The DEIR needs to analyze a broader range of potential alternatives to potentially meet project objectives while minimizing significant environmental impacts, such as a smaller reservoir project on the east fork of Pacheco Creek.*

The EIR “must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation.”<sup>15</sup> “One of [an EIR’s] major functions ... is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official.”<sup>16</sup> The discussion of alternatives must “include sufficient information about each alternative to allow evaluation, analysis, and comparison with the proposed project.”<sup>17</sup> “Under the ‘rule of reason,’ an EIR’s discussion of alternatives is adequate if it provides sufficient information to compare the project with a reasonable choice of alternatives.”<sup>18</sup>

Studied alternatives do not include a smaller reservoir project on the East Fork Pacheco Creek, which, as stated above, was first raised by the GCRCD in fall 2017. A new dam below the confluence of East Fork with the North Fork Pacheco Creek mainstem effectively blocks fish migration upstream to both North Fork Pacheco Creek and East Fork Pacheco Creek. By damming only the East Fork Pacheco Creek, the North Fork Pacheco Creek mainstem could be opened to fish passage upstream for 12 miles. There is a natural barrier to fish passage known as Hole in the Rock, a boulder cascade just above Kaiser-Aetna Road, located 12 miles above

---

<sup>15</sup> 14 Cal. Code of Regulations § 15126.6(a).

<sup>16</sup> *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 565 (1990) (emphasis in original; internal citations omitted). “An EIR need not consider every conceivable alternative but must consider a range of alternatives sufficient to permit the agency to evaluate the project and make an informed decision, and to meaningfully inform the public.” *Fed’n of Hillside & Canyon Associations v. City of Los Angeles*, 83 Cal. App. 4th at 1264.

<sup>17</sup> 14 Cal. Code of Regulations § 15126.6(d).

<sup>18</sup> *Fed’n of Hillside & Canyon Associations v. City of Los Angeles*, 83 Cal. App. 4th at 1264.

the current Pacheco Dam. Historic observer records indicate that trout were caught up to Hole in the Rock just below the Brem Horse Camp before the current Pacheco Dam was built.<sup>19</sup> Other special status species would also benefit from this alternative, as the North Fork Pacheco mainstem from the dam to Hole in the Rock in Henry Coe State Park is habitat for foothill yellow-legged frog, Western pond turtle, least Bell's vireo, and others dependent on streams or riparian shrub cover. Although it would have less storage capacity the DEIR should still consider this alternative to see if it would meet the objectives of the San Luis Low Point Improvement Project (SLLPIP), mentioned in the DEIR, with fewer environmental impacts.

Additionally, the DEIR should analyze the impacts of the Proposed Project and alternatives on fisheries not just based on historical conditions, but also accounting for alterations in hydrology and other conditions attributable to climate change. Not only will the fishery impacts of the Proposed Project and alternatives be different under a warming climate, but we believe the importance of implementing habitat improvements is critical to increasing their resilience and long-term survival.

### **Conclusion**

We recognize the considerable work and resources Valley Water has put into preparing the DEIR. However, we conclude that the information and analysis contained within the DEIR is insufficient to demonstrate the proposed Project or any of the alternatives will measurably contribute to restoration of steelhead on Pacheco Creek, particularly given the estimated cost of the proposed Project that will use public funds and knowledge that the lifetime of an expanded reservoir and new dam is likely to be 50+ years. We join in CDFW's comments on the DEIR and recommendations for revising and supplementing the environmental analysis contained therein.

We look forward to working with Valley Water and other stakeholders to ensure the EIR is sufficient to disclose the environmental consequences of the Proposed Project and alternatives and demonstrate that any project implemented will meaningfully and measurably contribute to restoration of steelhead to Pacheco Creek.



---

Gary Jahns, PhD  
President, Board of Directors  
GUADALUPE-COYOTE RESOURCE CONSERVATION  
DISTRICT



---

Patrick Samuel  
Bay Area Director  
CALIFORNIA TROUT, INC.

---

<sup>19</sup>

[https://en.wikipedia.org/wiki/North\\_Fork\\_Pacheco\\_Creek#Ecology](https://en.wikipedia.org/wiki/North_Fork_Pacheco_Creek#Ecology)