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ATTORNEYS AT LAW

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RE: COMMENT LETTER OF EDMUND JIN AND EVA LU ON THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE PACHECO RESERVOIR EXPANSION PROJECT

This comment letter is submitted on behalf of Edmund Jin and Eva Lu, owners of significant ranchland holdings ("Jin Property") affected by the Pacheco Reservoir Expansion Project ("Proposed Project") proposed by the November 2021 Draft Environmental Impact Report ("DEIR"). Mr. Jin and Ms. Lu are deeply concerned about the inadequacy of the DEIR in addressing the significant environmental impacts associated with the Proposed Project. The DEIR does not identify all relevant impacts, does not identify sufficient mitigation measures to resolve impacts that are identified, and fails to provide justification for the exorbitant anticipated costs of the Proposed Project. Based on it serious deficiencies, it should not be certified.

The Proposed Project is not an expansion of existing facilities. It would entail the construction of an entirely new dam facility, to create a reservoir orders of magnitude larger than the existing Pacheco Lake. The hardfill design of the dam has been identified by the Division of Dam Safety as presenting a safety risk to the

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public, calling into question whether the Proposed Project is even feasible as currently conceived. Assuming it can be constructed, the DEIR fails to adequately consider the broad environmental consequences that would result from the proposed inundation of approximately 1,500 acres of wildlife habitat, State park and recreational facilities, and productive ranchlands. Critical habitat, recreational opportunities, and ranching activities would be destroyed by the operation of the Proposed Project, and by its construction over the many years it would take to build.

The DEIR Does Not Acknowledge or Address the Impacts the Proposed Project Will Have on the Jin Property and Fails to Offer Meaningful Mitigation Measures.

Mr. Jin and Ms. Lu purchased their land holdings for the primary purpose of environmental stewardship. The Jin Property is home to a wide variety of flora and fauna, including wildlife such as bald eagles, dove, deer, rabbit, boar, mountain lions, and unknown numbers of insects and other birds, as well as several species of oak and pine trees, various shrubs, and native grasses. The Jin Property also serves nature-based recreation, and accommodates complementary cattle ranching operations, which serve to deter trespassing, poaching, and other intrusions and damage to the property and its natural resources. Under the Proposed Project, vast swaths of the Jin Property would be inundated with water, which would bisect the land holdings, cutting off direct access across the acreage. As a result, the opportunities for continued environmental stewardship and ranching activities on the Jin Property would be severely curtailed. (**Exhibit A** attached hereto is a map that depicts the Jin Property (in blue), and the proposed footprint of the Proposed Project (white outline).)

Mr. Jin and Ms. Lu are among a small group of owners whose privately owned lands will bear the entirety of the burden of all of real property acquisition

necessary for the Proposed Project. Given that hundreds of acres of the Jin Property are proposed to be inundated or otherwise included in the footprint of the Proposed Project, one would think some effort might have been made by Valley Water to identify impacts the Proposed Project would have to the Jin Property. However, the DEIR reflects an almost complete absence of consideration of such impacts. Other than vaguely cataloguing the existence of "built environment resources" within the study area on the Jin Property for statutory historical register eligibility, and indirectly addressing the potential presence of tribal cultural resources thereon, there is a grand total of one point of discussion concerning an impact on the Jin Property. There is the briefest mention of disruption of private access roads by the Proposed Project. That's it. Moreover, although there is a stated intent to construct a private permanent access road to the Jin Property—in acknowledgement that construction of the Proposed Project would inundate existing access roads—there is no detail specifying where such a road would be located, or any indication that such a measure would restore or otherwise alleviate the repercussions of the loss of interconnectivity of the Jin Property's acreage after the Proposed Project is constructed. (See DEIR 2-23.) Therefore, from the vague description provided, it does not appear that any specific consideration has actually been given to the access impacts to the Jin Property, or that any meaningful effort has been made to consider how such impacts can or cannot be effectively mitigated.

The DEIR Suffers from Foundational Flaws in Definition and Prioritization of Project Objectives and Premature Rejection of Project Alternatives.

Beyond concerns with impacts to the Jin Property, Mr. Jin and Ms. Lu are troubled by core foundational flaws apparent in the DEIR. Valley Water has set forth misguided definitions, assigned inappropriate prioritization of project

objectives, and has eliminated from consideration as part of the environmental review process superior alternatives to those formally selected and evaluated.

Valley Water has assigned "equal priority" to increasing suitable habitat in Pacheco Creek for steelhead, rather than retaining as a paramount primary objective the increase of water supply reliability and system operational flexibility to help meet municipal, industrial, and agricultural water demands during drought periods and emergencies, or to address shortages due to regulatory and environmental restrictions. (DEIR Alternatives Development and Project Description Appendix ("Alt. App."), 2-1-2.) It has further relegated improvement of water quality and minimization of supply interruption, and development of water supplies for environmental water needs for wildlife refuges to support habitat management in the Delta watershed, to "secondary" project objectives. (DEIR Alt. App., 2-2.) These determinations of priority are inappropriate, and inconsistent with the original objectives Valley Water set out to address.

Further, as Valley Water itself acknowledges, although an EIR need not consider every conceivable alternative to the project, the range of alternatives should be selected in such a way as to foster meaningful dialogue, informed decision making, and public participation. (DEIR Alt. App., 2-1.) Valley Water has failed to meet the mark in this respect.

Unjustifiable biases appear to have ruled out in-depth consideration of individual conceptual measures that, whether independently or collectively, could be viable and effective alternative options. One such bias is reflected in an immediate rejection of any measure reliant upon sourcing water from the Sacramento River or San Joaquin watersheds. (See e.g. DEIR Alt. App. 2-43, Table 2-7.) Another bias is evident against any measure that would not independently fully meet project benefits, irrespective of relative cost. For example,

implementation of additional in-basin groundwater storage and recovery operations is noted to pass technical, logistical, and cost screening and has "[h]igh potential to provide improved water supply reliability," but was not retained for consideration, either independently or in conjunction with other measures, because standing alone it "may be insufficient to meet needs throughout an extended drought for emergency response" and because it "could take several years" to fill the bank. (See e.g. DEIR Alt. App. 2-43, Table 2-7.)[1]

As a result of these kinds of biases, Valley Water has predictably landed on a one-stop shop option that it perceived to check most of its boxes, to the greatest extent, rather than to consider sets of complementary alternatives that in combination might result in superior benefits for comparable cost, or comparable benefits for lower cost, than the Proposed Project or studied alternatives. Valley Water could have coupled, for example, the conceptual measure of constructing a Bay Area regional desalination project or implementation of additional watershed reclamation with a groundwater storage option that would capitalize on the benefit of noted "[m]oderate potential to improve water supply reliability" uninhibited by the lack of presentation of a means of storing water for emergencies. (See e.g. DEIR Alt. App. 2-44, Table 2-7.) Instead, it simply eliminated such measures out of hand. And it is particularly troubling that as to identified measures with notable benefits, which were noted to meet all feasibility category criteria, cost was apparently not even evaluated, such as implementation of additional watershed reclamation and

[1] The same myopic thinking impacted the consideration of options to address the steelhead habitat restoration objective. (See e.g. DEIR Alt. App. 2-47, Table 2-8: conservation hatchery that would support tributaries throughout the Pajaro River watershed and minimization of livestock grazing and agricultural runoff to maintain or restore aquatic habitat functions, both of which measures met all feasibility category criteria, were nonetheless rejected because they would not provide "extensive restoration of habitat function and connectivity".)

construction of a conveyance to other Valley Water reservoirs to store CVP water supply. (DEIR Alt. App. 2-44, Table 2-7.)

Finally, if it were not bad enough that meritorious alternatives were prematurely rejected from consideration in the environmental review process, it is clear from the DEIR that the "No Project" alternative excludes consideration of pursuit of any of the rejected alternatives. (See DEIR 2-68-69.) It defies logic to conclude that in the absence of undertaking the Proposed Project, or one of the studied alternatives, none of the conceptual measures cited, or any other measure or combination of measures, would be pursued to address, even incrementally, the defined project objectives. Therefore, it is disingenuous for Valley Water to have analyzed comparative benefits and impacts of the Proposed Project and alternatives to a No Project scenario devoid of any beneficial measures in furtherance of such objectives.

Other Concerns Regarding the Proposed Project: Lack of Efficacy, Cost-Benefit Considerations, Misplaced Objectives

Questionable Efficacy and Unjustifiably High Costs of the Proposed Project

The efficacy of the Proposed Project in increasing water supply is highly questionable. Moreover, the Proposed Project cost projections are exorbitant, and are increasing. Water storage costs for the expanded reservoir are expected to be approximately $18,800 per acre-foot. Further, new geotechnical reports show a need for an additional one billion dollars in funding.

Meanwhile, rather than providing a source of new water supply, the Proposed Project, as described by San Jose Mayor Sam Liccardo, "would merely be a receptacle for water." This was confirmed by the District in an April 12, 2021,

meeting, in which staff stated that while the Proposed Project would increase local storage capacity and bank existing imported water for short-term drought relief, it will not significantly reduce water shortage severity during prolonged droughts or provide new water supply.

Roughly one-half of Santa Clara County's water supply is imported from other jurisdictions. The Proposed Project will not alleviate the shortage of water supply in the County itself. This is problematic because in the event of a prolonged drought, other jurisdictions will not necessarily have the excess water required to serve their own needs and those of Santa Clara County. By not creating a means to capture new water supply, the Proposed Project is effectively tying Santa Clara County to the fates of its neighbors.

While the Proposed Project is not completely without merit in providing more reliable water in an emergency situation, the benefits do not appear to outweigh the costs. Despite Valley Water's refusal to study them, there are more cost-effective and efficient solutions to the County's water supply problems, such as investment in water banks, advanced water recycling, and alternative stormwater capture projects. The California Water Commission ("CWC") identified seven alternative water supply projects in their consideration of Valley Water's resubmitted Proposition 1 Water Storage Investment Program ("WSIP") application, all of which were "lower cost and provide the same level of benefit" as Valley Water's preferred approach. One of these alternatives, water conservation and stormwater use, only costs $400 per acre-foot. Another alternative, groundwater recharge, also only costs $400 per acre-foot. The CWC notes that these alternatives would actually "provide supply in all years" and "allow more water to accumulate in groundwater storage and other surface storage reservoirs to be available in the event of an outage." These are concrete and tangible solutions to the water supply problems facing the

residents of Santa Clara County that are objectively better than Valley Water's approach via the Proposed Project.

Valley Water should not proceed with the Proposed Project, which eschews these lower cost options that could provide the same level of benefit. Storing water in other counties, such as Fresno and Kern, costs between $400-$600 per acre-foot. In stark contrast, the Proposed Project would have astronomically more expensive storage costs. These heightened costs will financially impact residents greatly. In fact, they have already begun to do so. Rates are expected to increase by 146% by the projected project completion date. Costs are likely to remain high because partnership participation is incomplete. While the Proposed Project has been awarded a $485 million grant from the CWC, the total project costs are currently estimated at approximately $3.5 billion. It is highly speculative to assume a $3 billion shortfall will be easily made up by participation of others.

Sadly, it appears Valley Water's Board simply does not care. Valley Water recently voted to approve a 9.1% water rate increase for next year despite a unanimous vote by the San Jose City Council a month prior asking Valley Water to stop rate increases. Director John Varela stated at a January 12, 2021 Board Meeting that Valley Water must take "every extreme measure that we can find to continue this Project." This stubborn and aggressive approach is hardly appropriate when project costs are skyrocketing following new geotechnical reports revealing a need to reconfigure the spillway design and bore 30 feet deeper into the ground to ensure dam stability, resulting in a one-billion dollar cost increase. These new reports have additionally prolonged the construction timeline from five to eight years. Residents should not be forced to acquiesce to the Proposed Project under these circumstance, particularly when they were given an initial cost estimate that is now unrecognizable following enormous – and anticipatable – increases.

Steelhead Habitat Preservation Is Being Inappropriately Prioritized

In light of viable and efficient alternatives, it is unclear why Valley Water remains steadfast in their commitment to the Proposed Project. In fact, in a December 2017 Santa Clara Valley Water District CEO Bulletin, they commented on the serious need to repair existing spillways at Anderson, Almaden, Calero, and Guadalupe dams to prevent an "Oroville-like failure" due to nonconformity with current design standards. When there is so much existing and pressing water supply work and dam repair to perform, the Proposed Project appears a bloated, untimely, and unnecessary distraction.

If Valley Water were genuinely and properly singularly focused upon the water supply problem, it would not pursue the Proposed Project. But it isn't. According to the DEIR: "The Proposed Project is proposed, and alternatives are being considered, notwithstanding their significant unavoidable impacts because of the importance to Valley Water of achieving the Project objectives and related benefits." (DEIR ES-37.) But it is apparent that the Proposed Project prioritizes habitat objectives over emergency response water supplies. (See DEIR ES-39-40.) This is evidenced by the fact that the No Project Alternative is not considered environmentally superior solely because it would not serve steelhead habitat objectives. (See DEIR ES-40.)

Although the Proposed Project is, or at one time was, ostensibly, a water supply measure, its focus has drifted too far in the direction of steelhead habitat preservation in a misguided effort to chase funding. Ecosystem improvement benefits must make up at least 50% of the Proposed Project's total public benefits for it to receive maximum funding from the WSIP. However, the goal of seeking WSIP funding alone cannot justify the enormous financial burden being brought

upon the citizens of Santa Clara County the Proposed Project is purportedly seeking to help.

The steelhead habitat emphasis is highlighted by the District resubmitting their WSIP application to the CWC based on several deficiencies in the original. While some corrections and explanations that Valley Water raised on their resubmission were accepted by the CWC, certain problems remained. According to the CWC, for example, "additional costs not included in the [Project] may be required to achieve potential population increases" for the steelhead. The CWC did not find the Proposed Project provides sufficient benefits for responses to non-drought emergencies stemming from Sacramento Delta water outages. The application required Valley Water to plan for Delta outages in the short and long term (years 2030 and 2070, respectively), but the CWC felt that they failed to do so because they did not consider "relevant alternative cost information." Specifically, Valley Water proposed on-site groundwater pumping but failed to properly account for times when groundwater storage falls below a critical stage. The CWC stated that there are alternatives such as water conservation, stormwater use, and groundwater recharge that could have addressed this issue.

These application deficiencies, even following resubmission, display a concerning pattern: Valley Water has not been considering viable, lower-cost alternatives to the Proposed Project. The approach is resulting in enormous costs, and Santa Clara Valley residents are unjustifiably being forced to foot the bill. They do not want, and should not have to pay for, a project that has been billed to them as a critical water supply project, when, in reality, it is a habitat preservation measure, to serve a single species, to the detriment of many other environmental interests.

Unacceptable Breadth and Depth of the Many Impacts of the Proposed Project Identified in the DEIR

Valley Water has failed to consider an appropriate array of alternatives to the Proposed Project, particularly ones that would serve primarily or exclusively to meet objectives related to water supply objectives as opposed to identified habitat concerns. And even among the considered alternatives, the Proposed Project is not even identified to be the environmentally superior alternative. (See DEIR ES-41.) Valley Water nonetheless selected it over an alternative that it acknowledges would have had less impacts upon woodland communities, waters of the State and the United States, special-status plants, habitats supporting state and federally listed species, geology and soils, recreation facilities, productive agricultural lands and ranchlands, archaeological resources, and tribal cultural resources. (See DEIR ES-40-41.)

There are few categories of environmental impact for which some impact has not been identified to be caused by the Proposed Project as compared to the No Project alternative. (See DEIR Table ES-6 beginning at ES-44.) And in the many cases, the conclusion that a "less than significant" impact is anticipated to result is based on the need to implement mitigation measures of questionable effectiveness, particularly with respect to biological resources impacts. Aesthetics, agriculture, energy, geology, soils, mineral resources, and paleontological resources, greenhouse gas emissions, hazards and hazardous materials, hydrology and water management, public access and recreation, utility and service systems, emergency responsiveness to wildfires—none of these areas will be free from impact is the Propose Project is constructed.

It appears that in nearly half of the identified impact categories listed in Table ES-6 of the DEIR, which compares environmental impacts of the Proposed

Project and alternatives as compared to a no project alternative, there will be significant and unavoidable impacts caused by the Proposed Project, which could be avoided or lessened by pursuit of other alternatives or the No Project alternative. (See DEIR ES-44-64.) Identified conflict of the Proposed Project with existing zoning for agricultural use, or Williamson Act contract, is identified as significant and unavoidable, with no proposed mitigation measures identified. (DEIR ES-44.) The Proposed Project will result in a significant and unavoidable impact in terms of soil erosion and/or loss of topsoil, as well as in presenting conflicts with land use planning and policies. (DEIR ES-55, 58.) There will be significant and unavoidable impacts on air quality, noise levels, and water quality for lengthy periods of construction. (DEIR ES-45, 58, 62-63.) And there will be permanent significant and unavoidable impact to cultural and tribal resources. (DEIR ES-52-53.)

Further, even among the considered alternatives, the Proposed Project is identified to cause a higher degree of impact in key respects. For example, adverse effects and loss of habitat for special-status avian species and nesting migratory birds and raptors are expected to exceed nearly all considered alternatives. (DEIR ES-48.) And the DEIR reveals that the "majority of permanent facility footprints and inundation areas associated with Proposed Project facilities would occur on private lands under Williamson Act contracts" – a "total amount of 1,417 acres . . . would be impacted by the Proposed Project permanent facility footprints and inundation areas." (See DEIR 3.3-15.) With the exception of only one alternative, the Proposed Project is identified to convert the most protected agricultural acreage of any alternative considered. (See DEIR 3.3-16, Table 3.3-6.) The DEIR further makes crystal clear that, notwithstanding Valley Water's prior assertions in its Draft CEQA Mitigated Negative Declaration (Jan. 2021), construction, operation, and maintenance and repair activities associated with the Proposed Project will

disturb human remains, as well as other significant tribal cultural resources and other archeological sites. (See e.g. DEIR 3.7-43-44, and summary chart at 3.7-29, 48.) And although the DEIR indicates there are significant and unavoidable impacts to tribal cultural resources for all studied alternatives, it appears the Proposed Project does not present the least such impacts. (See DEIR 3.7-41.)

In short, inadequate weight has been given the many identified impacts of the Proposed Project, and the DEIR is fatally deficient for this reason.

Conclusion

Despite clear and reasonable opposition from an array of constituents, and representatives and organizations on their behalf, Valley Water seems dead-set upon pursuing a course that is broadly unwanted and unwarranted. The Proposed Project would be irreparably destructive to affected lands, and to the sensitive natural and cultural resources existing on and beneath the lands. Yet Valley Water has misprioritized a certain vision of steelhead habitat restoration over ensuring the Proposed Project will meet water supply needs of the human population in a cost-effective manner, and wholly disregards other impacts to the environment. For Valley Water to press forward with the Proposed Project despite the significant and unmitigatable impacts to the environment identified in the DEIR, an enormous price tag, and questionable feasibility, objectives, and efficacy of its plans would be a grave error.

The DEIR does nothing but add fuel to the fire with respect to the serious concerns of Mr. Jin and Ms. Lu and many other public and private objectors. There are clearly major ethical, cultural, financial, and efficiency problems with the Proposed Project. Key political and conservationist figures in California oppose the Proposed Project, and for good reasons, which are only amplified by the DEIR,

which serves to highlight the blinders Valley Water has on to the high environmental and financial burdens of the Proposed Project. For all of the reasons discussed in this comment letter, and more, it is evident Valley Water has failed to fully analyze the impacts of the Proposed Project, has ignored or improperly weighted competing interests, and has failed either to devise sufficient means of mitigating harm the Proposed Project will cause or to simply recognize that in this instance "No Project" is the appropriate alternative to proceed with out of the unduly limited array of options Valley Water has considered. Mr. Jin and Ms. Lu respectful urge Valley Water to put on the breaks, step back, and do the necessary work to fairly and comprehensively study the viable alternatives to the Proposed Project, and take no action in furtherance of the Proposed Project on the basis of its deficient DEIR.

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Exhibit A

Pacheco Reservoir Expansion Project

Proposed Power Transmission Pole Locations
Proposed Power Transmission Line
Existing Power Transmission Line

Probable Maximum Footprint
Jin Parcels
Lawler Parcels
Moitozo Parcels
Quinto Parcel
Verdegaal Parcel
Other Property
State of California
New Dam
Spillway
Existing Pacheco Conduit/ Pacheco Tunnel
Conveyance Features
Permanent Access Road

0 1,000 2,000 Feet

N

Valley Water
AECOM
Stantec
GEI

Projection: CA State Plane II NAD83
Background: ESRI Aerial Imagery
Hillshade: Bare Earth Lidar DEM 1.5-foot (2016)
Parcel: Santa Clara Co Assessor
Prepared: 2021-05-14 by SCP

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